



The 2008 worldwide  
corporate tax guide

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## Preface

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The *Worldwide Corporate Tax Guide* summarizes the corporate tax regimes in more than 140 countries and also provides a directory of international tax contacts. The content is based on information current to 1 January 2008, unless otherwise indicated in the text of the chapter.

### Tax Information

This publication should not be regarded as offering a complete explanation of the tax matters referred to and is subject to changes in the law. Local publications of a more detailed nature are frequently available, and readers are advised to consult their local Ernst & Young professionals for further information.

Ernst & Young also produces guides on personal tax and immigration systems for executives, and on VAT and GST systems.

### Directory

Office addresses, telephone numbers and fax numbers, as well as names, telephone numbers and e-mail addresses of international tax contacts, are provided for the Ernst & Young member firms in each country.

Symbols that precede the names of some tax contacts designate that the individuals hold the following functions:

- ★ National director of the listed tax specialty
- ◆ Director of the listed specialty in the local office

The listing for each tax contact includes an office telephone number, which is a direct dial number if available. Mobile telephone numbers are listed for many tax contacts below the office telephone numbers.

The international telephone country code is listed in each country heading and, if presented as part of a telephone or fax number, is surrounded by brackets. Telephone and fax numbers are presented with the city or area code in parenthesis, and without the domestic prefix (1, 9, or 0) sometimes used within a country.

### Internet Site

Further information concerning Ernst & Young may be found at [www.ey.com](http://www.ey.com).

Ernst & Young  
January 2008

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## ALBANIA

(Country Code 355)

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*Because of frequent changes to the tax law and the rapidly changing economic situation in Albania, readers should obtain updated information before engaging in transactions.*

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### A. At a Glance

Corporate Profits Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10



Withholding Tax (%)	
Dividends	10
Interest	10
Royalties from Patents, Know-how, etc.	10
Rent	10
Gains on Disposal of Shares	10
Payments for Technical Services	10
Fees for Participation in Leading Councils	10*
Payments for Entertainment, Artistic or Sporting Events	10
Gambling Gains	20
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

\* A leading council is a supervisory committee or board.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income. Nonresident companies are subject to tax on their Albanian-source income only.

**Rates of Corporate Tax.** The standard rate of profits tax is 10%.

**Capital Gains.** Capital gains are included in ordinary income and are subject to profits tax at the regular rate.

**Administration.** The tax year is the calendar year.

An annual tax return must be filed by 31 March of the year following the tax year. Tax assessments with respect to irregularities or violations contained in the return are issued within 60 days after the filing of the return.

Companies must pay profits tax in monthly installments during the tax year. The installments are due on the 15th day of each month. Any balance of tax due shown on the annual tax return must be paid at the time of filing the tax return.

**Dividends.** Dividends paid to residents and nonresidents are subject to withholding tax at a rate of 10%. Double tax treaties may reduce this rate (see Section F). Dividends paid to resident companies are not subject to withholding tax if the participation exceeds 25%. Remittances of branch profits are also subject to withholding tax at a rate of 10%.

Companies must include dividends received from Albanian and foreign companies in taxable income.

**Foreign Tax Relief.** Under its tax treaties, Albania usually agrees to exempt foreign-source income from tax. Foreign taxes are creditable against Albanian tax only as provided in tax treaties.

## C. Determination of Trading Income

**General.** Taxable profit is based on the annual profit reported in financial statements prepared in accordance with the accounting law and regulations issued by the Minister of Finance. Taxable profit does not necessarily equal the profit shown in the financial statements, however, because certain specified adjustments are required for tax purposes.

All necessary and reasonable expenses incurred for business that are supported by documents from the taxpayer are deductible, except for the following:

- Acquisition and improvement costs for land;
- Cost of acquisition of fixed assets;
- Increase in paid-up capital and reserves created;
- Cost of rewards granted in kind;
- Pension and contribution payments other than those under the official social security system in Albania;
- Wages and salaries that are not paid through the banking system;
- Payments for construction, installation and other construction services provided to construction companies by small business entities;
- Dividends and profit allocations; and
- Prior-year errors.

Payments for nonresident services are deductible only if the settlement of the liability or the payment of the withholding tax is made in the fiscal year of the performance of the services.

In addition, the deductibility of certain expenses is limited. Certain expenses are partially deductible up to specified thresholds, such as the following:

- Representative and entertainment expenses are allowed up to 0.3% of annual turnover.
- Damages and losses, including losses from impairment, are deductible to the extent provided by the Bank of Albania provisioning policy.
- Depreciation may be deducted up to the amounts allowed by law (see *Tax Depreciation* below).
- General sponsorships are deductible to the extent of 3% of the pretax net income. For sponsorships for sport and cultural activities, this percentage is increased to 10%.
- Per diems are deductible up to ALL 3,000 per day for traveling in Albania and up to €60 per day for traveling abroad.
- Interest is deductible only to the extent that the rate does not exceed the average interest rate published by Bank of Albania and that the amount of the loan does not exceed four times equity.
- Costs of the improvements and maintenance are deductible only to the extent that they do not exceed 15% of the remaining value of the asset.
- The deductibility of expenses paid in cash is limited to 10% of the total expenditures for the year.

**Inventories.** The inventory valuation rules provided in the accounting law also apply for tax purposes. Inventory is valued at historical cost, which is determined by using the weighted-average, first-in, first-out (FIFO) or other specified methods. The method must be applied consistently. If the method is changed, the effect must be determined. However, a negative effect on profits is not recognized for tax purposes.

**Provisions.** Companies may not deduct provisions.

**Tax Depreciation.** Buildings, structures and intangible assets must be depreciated using the straight-line method. The applicable rates are 5% for buildings and structures, and 15% for intangible assets. Computers, information systems, software and all other fixed assets must be depreciated using the pooling system. The

applicable rates are 25% for computers, information systems and software, and 20% for all other fixed assets.

Assets that may not be depreciated include land and territory, artistic works, jewelry and precious metals.

**Relief for Losses.** Tax losses may be carried forward for three years. Loss carrybacks are not allowed.

**Groups of Companies.** The tax law does not contain any clear provisions for filing consolidated returns or relieving losses within a group. As a result, consolidated returns are not allowed.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax; exempt supplies include leases of land, supplies of buildings and financial services	
Standard rate	20%
Exports of goods and services rendered outside Albania and supplies of services relating to international transportation	0%
Excise duties on specified goods	
Cigarettes containing tobacco	ALL 40 per box
Coffee	ALL 50 per kilogram
Baked coffee	ALL 100 per kilogram
Beer from malt	ALL 30 per liter
Wines and vermouth	ALL 20 per liter
Other fermented drinks and non-alcoholic drinks	ALL 20 per liter
Brandy	ALL 100 per liter
Ethylic alcohol not denatured, with over 80% alcohol	ALL 400 per liter
Alcoholic drinks	
Containing alcohol over 12% of volume	ALL 150 per liter
Containing alcohol less than 12% of volume	ALL 70 per liter
Normal petrol	ALL 50 per liter
Unleaded petrol	ALL 37 per liter
Diesel; maximum tax is ALL 37 per liter, and minimum tax is ALL 17 per liter	75%
Social security contributions, on monthly salary up to ALL 65,700; paid by	
Employer	21.7%
Employee	11.2%

#### E. Foreign-Exchange Controls

In Albania, the currency market is a free market. The leke (ALL), the Albanian currency, is fully convertible internally.

Residents and nonresidents may open foreign-currency accounts in Albanian banks or foreign banks authorized to operate in Albania. Residents may also open accounts in banks located abroad. No limits are imposed on the amount of foreign currency that may be brought into Albania. Hard-currency earnings may be repatriated after the deduction of any withholding tax.

## F. Treaty Withholding Tax Rates

The rates of withholding tax in Albania's tax treaties are described in the following table.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Belgium	5/10 (a)	5	5
Bulgaria	5/10 (a)	10	10
China	10	10	10
Croatia	10	10	10
Czech Republic	5/10 (a)	5	10
Egypt	10	10	10
France	5/10 (a)	10	5
Greece	5	5	5
Hungary	5/10 (a)	0	5
Italy	10	5 (b)	5
Macedonia	10	10	10
Malaysia	5/10 (a)	10	10
Malta	5/10 (a)	5	5
Moldova	5/10 (a)	5	10
Netherlands	0/5/10 (c)	5/10 (d)	10
Norway	5/10 (a)	10	10
Poland	5/10 (a)	10	5
Romania	10	10 (b)	15
Russian Federation	10	10	10
Serbia and Montenegro	5/10 (a)	10	10
Sweden	5/10 (a)	5	5
Switzerland	5/10 (a)	5	5
Turkey	5/10 (a)	10 (b)	10
United Nations Mission in Kosovo	10	10	10
Nontreaty countries	10	10	10

- (a) The lower rate applies if the beneficial owner of the dividends is a company that holds at least 25% of the capital of the payer; the higher rate applies to other dividends.
- (b) Interest on government and central bank loans is exempt from withholding tax.
- (c) The 0% rate applies if the beneficial owner of the dividends is a company that holds at least 50% of the payer. The 5% rate applies if the beneficial owner of the dividends is a company that holds at least 25% of the payer. The 10% rate applies to other dividends.
- (d) The 5% rate applies to interest paid on loans granted by banks or other financial institutions. The 10% rate applies in all other cases.

Albania has signed a tax treaty with Ukraine, but this treaty has not yet entered into force.

Albania has negotiated tax treaties with Austria, Iran, Korea (South) and Lebanon, but these treaties have not yet been signed.

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## ANGOLA

(Country Code 244)

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**A. At a Glance**

Corporate Income Tax Rate (%)	35 (a)(b)
Capital Gains Tax Rate (%)	35
Branch Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends	10 (c)(d)
Interest	15
Royalties	10
Payments for Services	3.5/5.25 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) Income from certain activities, such as agriculture, forestry and cattle raising, is subject to tax at a rate of 20%. Oil companies are subject to Oil Income Tax rather than Industrial Tax (corporate income tax). See Section B.
- (b) The Ministry of Finance may provide a 17.5% rate for certain companies. In addition, tax exemptions are available under the new Tax Incentives Law. For details, see Section B.
- (c) Certain dividends are exempt from tax (see Section B).
- (d) A 2.5% rate applies to income derived from companies in fundamental areas of the economy.
- (e) A 35% tax rate applies to 10% of payments for construction of immovable fixed assets and related activities and to 15% of payments under contracts for other services.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies carrying out industrial and commercial activities in Angola are subject to Industrial Tax (corporate income tax).

An Angolan company, which is a company that has its head office or effective management and control in Angola, is subject to Industrial Tax on its worldwide profits.

Foreign entities with a permanent establishment in Angola are subject to Industrial Tax only on profits imputed to the permanent establishment.

All companies, regardless of whether they have a permanent establishment in Angola, are subject to withholding tax on payments received for services rendered (for details, see *Rates of Corporate Tax* below).

**Rates of Corporate Tax.** The ordinary Industrial Tax rate is 35%.

Income from certain activities, such as agriculture, forestry and cattle raising, is subject to a reduced tax rate of 20%.

The Ministry of Finance may grant a reduced Industrial Tax rate of 17.5% to companies incorporated in most disfavored regions, or to companies setting up industries based on local resources. The reduced tax rate is granted for a maximum period of 10 years.

In addition, the Tax Incentives Law, which concerns private investment, provides tax relief for companies that operate in the most disfavored regions of Angola and to companies operating in industries that make use of local resources. The disfavored regions are grouped into the following three zones:

- Zone A: Region of Luanda, some regions of the municipalities of Benguela, Cabinda and Huila, and the municipality of Lobito;
- Zone B: Some regions of the municipalities of Benguela, Cabinda and Huila, and the regions of Bengo, Cuanza Norte, Cuanza-Sul, Lunda-Norte, Lunda-Sul and Uige; and
- Zone C: Regions of Bié, Cuando, Cubango, Cunene, Huambo, Malanje, Moxito, Namibe and Zaire.

The law provides for the following tax incentives, which vary among the zones:

- Up to 6-year exemption from customs duties (including consumption tax but excluding stamp duty and service fees) or reduced rates for used machinery and equipment;
- Up to 15-year exemption from Industrial Tax;
- Up to 15-year exemption from dividend withholding tax; and
- Exemption from property transfer tax.

All companies, regardless of whether they have a permanent establishment in Angola, are subject to withholding tax on payments received for services rendered. If the payment for the services rendered is imputed to an entity with its residence, head office or permanent establishment in Angola, the withholding tax applies regardless of whether the services are rendered in or outside Angola. The rate of the withholding tax is the normal Industrial Tax rate of 35%. This rate is applied to 10% of payments for construction and related services that are associated with immovable fixed assets, and to 15% of payments for other services. The payer must withhold the tax from each payment and remit the withholding tax to the Angolan government. The tax withheld is considered to be a payment on account if the recipient has a residence, head office or permanent establishment in Angola. Otherwise, the tax is final.

Income from oil extraction is subject to Oil Income Tax at a total rate of 65.75%. In addition, companies engaged in exploration for and production of oil, gas and similar products must pay Oil Production Tax at a total rate of 20%. Oil Transaction Tax and a Surface Surcharge may also be levied at rates of 70% and US\$300 per square kilometer, respectively.

Contracts, such as production-sharing agreements, between oil companies and the Angolan government may override the Oil Production Tax and Oil Transaction Tax and may set forth different taxes and applicable rates.

**Capital Gains.** Capital gains on profits derived from the sale of fixed assets are subject to Industrial Tax at the regular tax rate of 35%.

**Administration.** The tax year is the calendar year.

All companies engaging in activities in Angola must register with the tax department to obtain a taxpayer number.

Companies, including foreign companies with a permanent establishment in Angola, must file an annual tax return, together with their financial statements and other documentation, by 31 May in the year following the tax year.

Companies must make monthly advance payments of Industrial Tax. The tax base for the monthly payments is 10% of the preceding month's turnover. The Industrial Tax rate of 35% is applied to this tax base to compute the amount of the advance payment. The advance payments are due on the last day of each month. If the total amount of the advance payments exceeds the tax due for the tax year, the excess may be carried forward as a tax credit against the tax payable into the following three years. In practice, companies have not yet been making these advance payments.

Penalties are imposed for failure to file tax returns and other required documents. If, on the final assessment, the tax authorities determine that a further payment is required and that the taxpayer is at fault, interest is imposed on the amount of the additional payment. Fines, which are generally based on the amount of tax due, are also imposed. If the tax due is not paid, additional interest is imposed from the date of the tax authorities' notice that an additional payment is due.

**Dividends.** In general, companies are subject to tax on the gross amount of dividends received.

Dividends received from Angolan companies subject to Industrial Tax are exempt from tax if, at the time of the distribution, the recipient owns at least 25% of the payer and has held the shares for at least two years or since the incorporation of the payer. In addition, dividends paid by Angolan companies to certain insurance companies or their holding companies are exempt from Industrial Tax.

A 10% withholding tax is imposed on taxable dividends and may be credited against Industrial Tax due on the annual return. A reduced withholding tax rate of 2.5% applies to dividends derived from companies operating in fundamental areas of the Angolan economy.

**Foreign Tax Relief.** No relief is granted for foreign taxes paid by Angolan taxpayers.

### **C. Determination of Trading Income**

**General.** Taxable income is the income reported in companies' financial statements, subject to certain adjustments. Expenses considered indispensable in the production of income and the maintenance of a production unit are deductible. Representation expenses, such as travel expenses, deemed to be unreasonable by the tax authorities, as well as fines and penalties, are not deductible.

**Inventories.** Inventories may be valued by any currently acceptable method provided that the method is consistently applied and is based on documented purchase prices.

**Provisions.** Provisions for the following items are allowable:

- Bad debts, which cannot exceed 6% of the balance of receivables;
- Risks that cannot be insured and may have to be paid; and
- Depreciation in the value of inventory, provided it does not exceed 2.5% to 8% of the value of the inventory.

**Tax Depreciation.** Depreciation rates are provided in the law. The following are some of the currently applicable rates.

Asset	Rate (%)
Vehicles	33.33
Office buildings	2
Industrial buildings	4
Electric motors and mechanical engines	16.66
Furniture	10

These rates may vary depending on the industry sector.

**Relief for Losses.** Companies may carry forward tax losses for three years. No carryback is allowed.

**Groups of Companies.** There are no tax regulations governing groups of companies (but see Section E).

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Training levy, on oil and gas exploration and production companies and their subcontractors	
Production companies	US\$0.15 per barrel
Exploration companies	US\$200,000 a year
Subcontractors under a contract with a term exceeding one year; levied on annual gross income	0.5%
Stamp duty, on the amount of receipts	1%
Consumption tax; rate varies according to type of good and service	2% to 30%
Custom duties, on imports	2% to 30%
Urban property tax, on rented properties	30%
Property transfer tax	2% to 10%
Social security contributions, on salaries and additional remuneration; paid by	
Employer	8%
Employee	3%

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Banco Nacional de Angola supervises all foreign-exchange operations. For certain transactions, such as the payment of dividends, prior authorization from the Ministry of Finance is required.

In general, repatriation of profits is permitted for approved foreign-investment projects. In certain cases, a time schedule for repatriation of profits may be imposed. Proceeds from the sale or liquidation of an investment may not be repatriated until six years after the capital was initially imported.



**Antiavoidance Legislation.** The tax authorities may adjust the taxable income derived from transactions between related parties.

## F. Tax Treaties

Angola does not have any tax treaties in force. It is expected that Angola will enter into a tax treaty with Portugal in the near future.

Angola has entered into an agreement with Portugal on the reciprocal promotion and protection of investments. However, this agreement does not provide any specific tax benefits.

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## ARGENTINA

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**A. At a Glance**

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35
Branch Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends	0 (b)
Interest	15.05/35 (c)
Royalties from Patents, Know-how, etc.	21/28/31.5 (c)
Branch Remittance Tax	0 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) A Tax on Minimum Presumed Income is payable to the extent it exceeds regular corporate income tax for the year. For details, see Section B.
- (b) If the amount of a dividend distribution or a profit remittance exceeds the after-tax accumulated taxable income of the payer, a final withholding tax of 35% may be imposed on the excess.
- (c) These are final withholding taxes imposed on nonresidents only. For details concerning the rates, see Section B.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are taxed on worldwide income. Any profits, including capital gains, are taxable. Companies incorporated in Argentina and branches of foreign companies are considered to be resident companies.

**Rates of Corporate Tax.** Corporate tax is payable at a rate of 35%.

**Tax on Minimum Presumed Income.** The Tax on Minimum Presumed Income (TMPI) is imposed on resident companies and branches of foreign companies. The TMPI is payable to the extent it exceeds regular corporate income tax for the year.

The tax base for the TMPI is the resident company's or branch's worldwide assets at the end of the tax year. Certain specified assets are excluded from the calculation of the tax base.

The standard rate of TMPI is 1%, but special rates apply to certain types of companies.

TMPI that is paid may offset regular income tax in the following 10 tax years.

**Capital Gains.** Capital gains derived by tax-resident companies are included in taxable income and taxed at the regular corporate tax rate. Capital gains on shares held by non-Argentine companies are generally exempt from tax.

However, under amendments introduced in 2001, the sale of shares by a non-Argentine company may be subject to withholding tax if the principal activity of the non-Argentine company, as a result of its legal nature, or under its bylaws, is to make investments outside the jurisdiction of the country where it was formed or if the legal regime or bylaws governing its activities expressly prohibits carrying out certain transactions or investments in such jurisdiction. This type of company is known as an offshore company. The withholding tax is equal to either 17.5% of the gross proceeds from the sale or 35% of the net gain from the sale; the taxpayer elects the type of taxation.

The validity of the tax rules described in the second paragraph of this section is currently under discussion, as a result of several amendments to the tax law and guidance provided by the National Treasury Attorney. Under the latest opinion of the National Treasury Attorney, which is supposed to be respected by the tax authorities, the taxation of offshore companies discussed in the second paragraph of this section is no longer in force, effective from 2002. Taxpayers should monitor the status of this issue before engaging in any transactions.

**Administration.** The tax year for a company is its accounting year. Companies are required to make 10 advance payments of corporate income tax. The first payment is equal to 25% of the preceding year's tax and the other payments are each equal to 8.33% of such tax. The payments are due monthly beginning in the sixth month after the end of the accounting year. The due dates depend on the company's taxpayer registration number.

Under certain circumstances, advance payments of TMPI (see *Tax on Minimum Presumed Income* above) may be required.

Companies must file their tax returns and pay any balance due by a specified date in the fifth month after their accounting year. If the payment is late, interest is charged.

**Dividends.** In general, dividends and branch remittances are not subject to tax. However, if the amount of a dividend distribution or a profit remittance exceeds the after-tax accumulated taxable income of the payer, a final withholding tax of 35% may be imposed on the excess.

**Withholding Taxes on Interest and Royalties.** Final withholding taxes are imposed on interest and royalties paid to nonresidents.

A withholding tax rate of 15.05% applies to the following types of interest payments:

- Interest on loans obtained by Argentine financial entities.
- Interest on loans granted by foreign financial entities located in the following jurisdictions:
  - Jurisdictions not listed as tax havens under the Argentine income tax regulations; or
  - Jurisdictions that have signed exchange-of-information agreements with Argentina and have internal rules providing that no banking, stock market or other secrecy regulations can be applied to requests for information by the Argentine tax authorities.
- Interest on loans for the importation of movable assets, except automobiles, if the loan is granted by the supplier of the goods.
- Under certain conditions, interest on investments in Argentine financial entities.

The withholding tax rate for all other interest payments to nonresidents is 35%.

The general withholding tax rate for royalties is 31.5%. If certain requirements are satisfied, a 21% rate may apply to technical assistance payments and a 28% rate may apply to certain royalties.

**Foreign Tax Relief.** Resident companies may credit foreign income taxes against their Argentine tax liability, up to the amount of the

increase in that liability resulting from the inclusion of foreign-source income in the tax base.

Direct and indirect foreign tax credits are available. To qualify for an indirect foreign tax credit, an Argentine company must own directly at least 25% of a first-tier subsidiary's shares. In addition, for a foreign tax credit regarding a second-tier subsidiary, an Argentine company must have an indirect ownership interest of at least 15%. The credit does not apply below the second tier.

### **C. Determination of Trading Income**

**General.** Tax is applied to taxable income, which is the accounting profit (not adjusted for inflation) earned in the tax period after adjustments provided for by the tax law. Exemptions are usually insignificant.

Expenses are deductible to the extent incurred in producing taxable income, subject to certain restrictions and limitations, such as those applicable to the following: representation expenses; directors' fees; and royalties for patents and trademarks paid to non-residents. Depreciation, rental payments and all other automobile expenses, such as license fees, insurance, fuel and maintenance, are also deductible, subject to certain restrictions. In general, certain limitations apply to the deductibility of interest payments to foreign related entities that are not subject to the withholding tax rate of 35%.

Any expense incurred by an Argentine company in favor of a foreign related party that is deemed Argentine-source income for the recipient of the payment can be deducted for tax purposes in the year of accrual only if the payment is made by the date when the income tax return for that year is due. Otherwise, such expenses must be deducted in the year of payment. This limitation also applies to expenses paid to individuals or entities located in tax havens, regardless of whether they are related parties.

**Foreign-Exchange Losses.** Non-capital foreign-currency gains and losses arising from customary business transactions are treated as business income or expenses for the year in which the exchange fluctuation occurs.

**Inventories.** Stock is valued according to procedures established by the tax law, which result in values nearly equal to its market value or replacement cost at the end of the tax period, depending on the type of goods.

**Provisions.** A provision for bad debts is allowed. However, it must be computed according to rules prescribed by the tax law.

**Depreciation.** Tangible assets may be depreciated using the straight-line method over the assets' expected lives. A method based on effective use may also be acceptable. In general, buildings are depreciated at an annual rate of 2%. However, a higher rate may be acceptable if it is established that, because of the materials used to construct the building, the expected useful life is less than 50 years. The law does not specify rates for movable assets. Intangible property may be depreciated only if it has a limited life based on its characteristics. Certain assets, such as goodwill and trade names, may not be depreciated.

**Relief for Losses.** Tax losses may be carried forward for five tax periods. Losses resulting from sales of shares or from foreign-source activities may offset only the same type of income. Loss carrybacks are not permitted.

Except for hedge transactions, losses resulting from the rights contained in derivative instruments or contracts may offset only the net income generated by such rights during the fiscal year in which the losses were incurred or in the following five fiscal years. For this purpose, a transaction or contract involving derivatives is considered a hedge transaction if its purpose is to reduce the impact of future fluctuations in market prices or fees on the results of the primary economic activities of the hedging company.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT), on goods delivered and services rendered in Argentina, on services rendered outside Argentina that are used or exploited in Argentina, and on imports	
Standard rate	21
Other rates	10.5/27
Tax on financial transactions; generally imposed on debits and credits with respect to checking accounts; a portion of the tax may be creditable against other taxes	
General rate	0.6
Other rates	0.05/0.075/0.1/ 0.25/0.5/1.2
Various local taxes on gross receipts, real estate and other items	Various
Social security taxes (including medical care contributions), on monthly salaries; paid by employer; a portion may be creditable against VAT; the creditable portion varies depending on where the employees render services	23/27
Export duties; general rates; higher rates apply to oil exports	5 to 20
Tax on personal assets; imposed on all legal persons and individuals domiciled abroad holding ownership interests in Argentine companies; tax is calculated based on the equity value of the Argentine company; tax is paid by the Argentine company, but the company may recover the tax paid from the foreign shareholder; certain exceptions may apply, depending on the country of the investor	0.50

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Executive Branch and the Central Bank have issued regulations that establish certain requirements for the transfer of funds abroad.

Exporters must repatriate into Argentina the cash derived from exports of goods and services within a specified time period.

Funds deriving from loans granted from abroad must be received in Argentina and remain in the country for a minimum term. In certain circumstances, 30% of the funds received from abroad must be held as foreign currency in a non-interest bearing deposit for a one-year period.

Payments abroad of dividends, interest and principal and for imports of goods are allowed if certain requirements are met.

**Debt-to-Equity Rules.** Under general principles, transactions between related parties must be made on an arm's length basis.

A debt-to-equity ratio of 2:1 for the deduction of interest applies to loans granted by foreign entities that control the Argentine borrower company (according to the definition provided for transfer-pricing purposes), except for those cases in which interest payments are subject to a withholding tax rate of 35%.

If the debt-to-equity ratio is applicable, interest paid on liabilities in excess of the ratio is nondeductible. The interest expenses disallowed as a deduction as a result of this limitation are treated as dividends and may not be deducted in future years.

**Transfer Pricing.** The Argentine law includes transfer-pricing rules that generally apply to transactions between related parties. In addition, transactions between unrelated parties may also be subject to these rules. Transactions with entities and individuals located in low-tax jurisdictions (the Executive Branch has published a list of countries and other jurisdictions qualifying as low-tax jurisdictions) are deemed to be not carried out at arm's length. The law provides for the following transfer-pricing methods:

- Comparable uncontrolled price method;
- Resale price method;
- Cost-plus method;
- Profit-split method; and
- Transactional net margin method.

If exports of agricultural commodities and other products with a publicly quoted price are made to related parties and if an international intermediary who is not the effective purchaser of the products participates in the transaction, the appropriate transfer price is deemed to be the higher of the market quote on the day the products are delivered and the price agreed to by the parties. This rule does not apply if the foreign intermediary meets the following requirements:

- It has a real presence and maintains a commercial establishment to manage its own activities in its country of residence, and it has assets, risks and functions (operations) that correspond with the volume of its transactions;
- Its principal source of income is not passive income, income from trading goods to or from Argentina, or income from intra-group trading; and
- Its intragroup operations do not exceed 30% of its annual transactions.

A taxpayer must submit the following to the tax authorities to demonstrate the reasonableness of its transfer-pricing policy: special tax returns; and a special report signed by an independent certified public accountant, which is based on a mandatory transfer-pricing study.

## F. Treaty Withholding Tax Rates

Some of Argentina's tax treaties establish maximum tax rates lower than those under general tax law. To benefit from a reduced treaty withholding tax rate, certain formal requirements must be met. The following table shows the lower of the treaty rate and the rate under domestic tax law.

	<b>Dividends (a)</b> %	<b>Interest (c)</b> %	<b>Royalties (c)</b> %
Australia	10/15 (b)	0/12	10/15
Austria	15	0/12.5	15
Belgium	10/15 (b)	0/12	3/5/10/15 (d)
Bolivia	35	15.05/35	21/28/31.5
Brazil	35	15.05/35	21/28/31.5
Canada	10/15 (b)	0/12.5	3/5/10/15 (d)
Chile	35	15.05/35	21/28/31.5
Denmark	10/15 (b)	0/12	3/5/10/15 (d)
Finland	10/15 (b)	0/15	3/5/10/15 (d)
France	15	15.05/20	18
Germany	15	10/15	15
Italy	15	15.05/20	10/18 (e)
Netherlands	10/15 (b)	0/12	3/5/10/15 (d)
Norway	10/15 (b)	0/12	3/5/10/15 (d)
Spain	10/15 (b)	0/12	3/5/10/15 (d)
Sweden	10/15 (b)	0/12	3/5/10/15 (d)
Switzerland (f)	10/15 (b)	0/12	3/5/10/15 (d)
United Kingdom	10/15 (b)	0/12	3/5/10/15 (d)
Nontreaty countries	35	15.05/35 (g)	21/28/31.5 (g)

- (a) The rates shown in the table apply to the amount of the dividend distribution exceeding the after-tax accumulated taxable income of the payer.
- (b) The 10% rate applies if the beneficial owner of the dividend is a company that controls, directly or indirectly, at least 25% of the voting power of the payer. The 15% rate applies to other dividends.
- (c) The rates listed are the lower of the treaty or statutory rates. For details concerning the domestic rates, see Section B.
- (d) In general, the rates apply to the following categories of payments: 3% for the use of, or right to use, news; 5% for the use of, or right to use, copyrights of literary, dramatic, musical or other artistic works (but not royalties with respect to motion picture films and works on film or videotape or other means of production for use in connection with television); 10% for the use of, or right to use, industrial, commercial or scientific equipment or patents, trademarks, designs, models, secret formulas or processes, or for the use of or information concerning scientific experience, including payments for the rendering of technical assistance; and 15% for other royalties. These categories may differ slightly from treaty to treaty.
- (e) The 10% rate applies to royalties for the use of, or the right to use, copyrights of literary, artistic or scientific works. The 18% rate applies to other royalties.
- (f) The tax treaty has not yet been approved by the Argentine Congress. However, under a letter dated 23 December 2000, signed by the Ministers of Economy of Argentina and Switzerland, the countries agreed that this tax treaty is provisionally in force, effective from 1 January 2001.
- (g) For details concerning these rates, see Section B.

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### A. At a Glance

Corporate Income Tax Rate (%)	28
Capital Gains Tax Rate (%)	28
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	0/5/10 (a)
Interest	0
Royalties from Patents, Know-how, etc.	0
Foreign-Exchange Commission	1.3 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) The 0% rate applies to dividends paid to resident holding companies. The 5% rate applies to dividends paid to nonresident publicly traded companies. The 10% rate applies to dividends paid to other nonresidents.

(b) A foreign-exchange commission is imposed on all payments by residents to nonresidents. The commission is withheld by banks on behalf of the Central Bank of Aruba.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Domestic corporations are taxed on worldwide income. A domestic corporation is one that is established in Aruba. Branches of foreign companies are taxed on Aruban-source income.



Tax is levied on total profits earned from all sources during the company's accounting period. "Profit" means the total of net gains, under any name or any form.

**Rates of Corporate Tax.** Profit tax is imposed at a flat rate of 28%.

Effective from 1 January 2003, the offshore and tax holiday regimes were abolished. However, established offshore companies and tax holiday companies were grandfathered until 2007.

Companies operating in the free zone are subject to profit tax at a rate of 2% on profits derived from their activities and to a free zone facility charge of 1.1% on their annual turnover. The free zone is a defined territory where no import duties are levied if the goods are not imported for use in the domestic market.

**Special Companies.** Two types of special companies available in Aruba are described below.

*Imputation Payment Companies.* Imputation Payment Companies (IPCs) were introduced, effective from 1 January 2003. The effective tax rate for an IPC can be as low as 2%, depending on the company's structure. An IPC may engage in the following activities only:

- Conducting hotel operations;
- Conducting aviation operations;
- Conducting shipping operations;
- Operating an oil refinery;
- Developing, acquiring, holding, maintaining and licensing intellectual and industrial rights, similar rights and usage rights;
- Insuring special entrepreneurial risks (activities of captive insurance companies);
- Financing that is different from the financing offered by credit institutions;
- Investing other than in real estate; and
- Holding of shares and equities.

*Aruba Exempt Companies.* Aruba Exempt Companies (AVVs) are subject to profit tax and to withholding tax on dividends paid unless they perform one of the following activities:

- Financing (if they do not act as credit institutions);
- Investing other than in real estate;
- Holding of shares and equities; or
- Licensing of intellectual and industrial rights, similar rights and usage rights.

**Fiscal Transparency.** An Aruban company (NV or AVV) can elect fiscal transparency for Aruban tax purposes within one month after incorporation. If fiscal transparency is elected, the tax authorities look through the entity and tax the shareholders. It is also possible to obtain an advance ruling from the local tax authorities on the treatment of the local presence.

**Branch Profits Tax.** Branches of foreign companies are taxed at the same rate as resident companies. No additional withholding taxes are imposed on remittances of profits.

**Capital Gains.** Capital gains are taxed as ordinary income. However, certain capital gains are exempt from profit tax under the participation exemption (see *Participation Exemption* below).

**Administration.** The profit tax return for the preceding accounting period must be filed within 60 days after distribution of the tax return forms. The tax return forms are normally distributed within five months after the year-end. The profit tax due is payable two months after the receipt of the assessment.

**Dividends.** A 10% withholding tax is imposed on dividends distributed to nonresidents. The rate is reduced to 5% for dividends distributed to publicly traded companies. A 0% rate applies to dividends distributed to resident companies qualifying for the participation exemption.

The Tax Regulation for the Kingdom of the Netherlands provides for special dividend withholding tax rates (see Section F).

**Participation Exemption.** Aruban resident companies are exempt from profit tax on dividends and capital gains with respect to a qualifying participation.

**Foreign Tax Relief.** Foreign tax relief is available through the Tax Regulation for the Kingdom of the Netherlands of which Aruba is a partner. Foreign tax relief is also available under the state decree preventing double taxation.

### C. Determination of Trading Income

**General.** Commercial profits must be calculated in accordance with “sound business practice” and are determined using the following calculation: gross income minus returns, rebates and discounts equals net income; net income minus costs and expenses equals commercial profits before taxes.

**Inventories.** Inventories are generally valued using the historical-cost, first-in, first-out (FIFO) or weighted-average methods.

**Depreciation.** Depreciation may be calculated by the straight-line, declining-balance or flexible methods. Accelerated depreciation methods are also available. The accelerated methods may be abolished, effective from 2007.

### D. Turnover Tax

A turnover tax is introduced, effective from 1 January 2007. The tax rate is 3% of gross turnover. The tax is levied as a withholding by the entrepreneur on all deliveries of goods and services.

### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Central Bank regulates the foreign-exchange market and carries out the necessary transactions as executor of exchange policy. Remittances abroad require an exchange license issued by the Central Bank.

**Debt-to-Equity Rules.** Aruba does not impose a debt-to-equity ratio.

**Controlled Foreign Companies.** Aruba does not have controlled foreign company legislation.

### F. Tax Treaties

Provisions for double tax relief are found in the Tax Regulation for the Kingdom of the Netherlands, which contains provisions to

avoid double taxation between the Netherlands, Aruba and the Netherlands Antilles regarding taxes on income, capital and so forth.

The Tax Regulation for the Kingdom of the Netherlands provides for the following rates of dividend withholding tax:

- General rate of 10%;
- 7.5% if the recipient of the dividends is a company that has capital divided in shares and that has an interest in the distributing company of at least 25%; and
- 5% if the recipient of the dividends is subject to profit tax at a rate of at least 5.5%.

Aruba has entered into a tax information exchange agreement with the United States. This agreement includes a measure that allows U.S. taxpayers to claim in their U.S. tax return a tax deduction for expenses associated with a convention held in Aruba.

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**A. At a Glance**

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30

Withholding Tax (%)	
Dividends (a)	
Franked	0
Unfranked	30 (b)
Interest	10 (c)
Royalties from Patents, Know-how, etc.	30 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Indefinite

- (a) Franking of dividends is explained in Section B.
- (b) This is a final tax that is imposed on payments to nonresidents only. A reduced rate (in recent treaties, reduced rates vary between 0%, 5% and 15%) applies to residents in treaty countries. An exemption from dividend withholding tax applies to unfranked dividends paid by Australian resident companies to nonresidents if the payer satisfies certain specified conditions.
- (c) In general, this is a final withholding tax that is imposed on payments to nonresidents only. However, withholding tax is imposed in certain circumstances on interest paid to residents carrying on business overseas through a permanent establishment (branch).
- (d) In general, this is a final withholding tax that is imposed on gross royalties paid to nonresidents. A reduced rate (5% in recent treaties) applies to residents of treaty countries.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** An Australian resident corporation is subject to income tax on its nonexempt worldwide income. Noncash business benefits may be included as income in certain circumstances. A nonresident corporation is subject to Australian tax only on Australian-source income.

Corporations incorporated in Australia are residents of Australia for income tax purposes, as are corporations carrying on business in Australia with either their central management and control in Australia or their voting power controlled by Australian residents.

**Rates of Corporate Tax.** For the 2007–08 tax year, resident corporations are subject to tax at a rate of 30%. Income of nonresident corporations from Australian sources that is not subject to withholding tax or treaty protection is similarly taxable at 30%. However, a nonresident corporation not operating in Australia through a permanent establishment is generally subject to tax only on Australian-source passive income, such as rent, interest, royalties and dividends.

**Capital Gains.** Capital gains and losses, resulting from a capital gains tax (CGT) event may be subject to tax or recognized for tax purposes. The income tax law provides for many specific CGT events, including disposals of assets, grants of options and leases, and events arising from the tax consolidation and foreign-currency rules (see Section C). Capital gains or losses may be disregarded if the asset was acquired before 20 September 1985 or if a lease was granted or renewed before that date. Capital gains are determined by identifying the capital proceeds (money received or receivable or the market value of property received or receivable) with respect to the CGT event and deducting the cost base of an asset, indexed for inflation. The indexation of the cost base of CGT assets was frozen as of 30 September 1999, and indexation is denied for assets acquired after 21 September 1999.



Gains derived from sales of assets purchased and sold within 12 months are generally fully taxable.

Capital gains and losses on disposals of plant or other depreciating assets on or after 21 September 1999 are not subject to the CGT provisions. Instead, these amounts are treated as balancing adjustments under the depreciation rules (see Section C).

Assets acquired by a company before 20 September 1985 are deemed to have been acquired on or after that date unless the Commissioner of Taxation is satisfied or considers it reasonable to assume that there was continuity of majority beneficial ownership in the assets of the company. Public companies that passed the test up to 30 June 1999 are deemed to fail the test on that date unless they can demonstrate continuity of ownership. A company that passes the test on 30 June 1999 will be deemed to have a change in its majority beneficial interest every five years thereafter or on the happening of abnormal trading in its shares unless it satisfies the Commissioner of Taxation that the majority beneficial interest in the assets of the company has not changed.

CGT rollover relief may be elected for certain transfers, with taxation deferred until the occurrence of a subsequent disposal for which the relief is not available. CGT rollover relief is no longer available for asset transfers within wholly owned groups after 30 June 2003, following the introduction of tax consolidation. CGT rollover relief is available for certain scrip-for-scrip transactions occurring on or after 10 December 1999 if an acquirer offers certain securities in exchange for the seller's securities. The rules apply to certain exchanges of share, trust units, convertible notes and options. However, exchanges of shares for trust units do not qualify for relief.

Capital losses are calculated using the reduced cost base of assets without indexation for inflation. Capital losses are deductible only from taxable capital gains, not from ordinary income. However, trading losses are also deductible from net taxable capital gains which are included in assessable income.

The capital gain or capital loss derived by a company from the disposal of shares in a foreign company may be partly or wholly disregarded to the extent that the foreign company has an underlying active business and that the company has held a direct voting interest in the foreign company of at least 10%, for a period of at least 12 months in the 2 years before the disposal. The participation exemption can also reduce the attributable income arising from the disposal of shares owned by a controlled foreign company (see Section E) in another foreign company.

Foreign residents are subject to CGT on a limited range of assets, as compared to residents. A capital gain or loss that a foreign resident derives from the disposal of an asset is disregarded unless it relates to an asset that is a "taxable Australian property." This term broadly includes direct and indirect interests in Australian real property, the business assets of an Australian permanent establishment and a mining, quarrying or prospecting right if the minerals, petroleum or quarry materials are located in Australia. The disposal by a foreign resident of a nonportfolio interest (a direct or indirect holding of 10% or more) in an Australian or foreign entity is subject to CGT if, broadly, the value of the entity's assets is principally derived from Australian real property.

**Financial Arrangements.** The Australian government has proposed legislation to reform the taxation of financial arrangements. The proposed legislation introduces clearer rules for the tax recognition over time of gains and losses from financial arrangements, with four methods (using accounting approaches) available at a taxpayer's election, to supplement the default methods.

These new laws are proposed to apply to financial arrangements first held in income years beginning on or after 1 July 2009. Taxpayers can elect for the new law to apply to financial arrangements first held in income years beginning on or after 1 July 2008, and to existing financial arrangements. Foreign-currency gains and losses are already covered by Australian tax law (see *Foreign-Exchange Gains and Losses* below).

**Administration.** The Australian tax year ends on 30 June. If the annual accounting period of a corporate taxpayer does not end on 30 June, the taxation authorities may agree to use a substituted period (instead of a tax year ending 30 June).

A self-assessment tax collection system applies for companies, superannuation funds, approved deposit funds and pooled superannuation trusts. In general, companies with an income year-end of 30 June must file an annual income tax return by the following 31 October. Companies granted permission to adopt a different income year must file their returns by the 15th day of the 7th month after the end of their income year. However, the Tax Office has a filing program providing extensions that allow tax practitioners to file their clients' returns over a 12-month period. A company's lodgment category determines the due date for the filing of the company's annual income tax return by the tax agent.

Under a pay-as-you-go (PAYG) installment system, in general, companies must make quarterly payments of income tax within 21 days after the end of each quarter of the tax year. The amount of each installment is based on the income earned in the quarter.

**Dividends.** Franked distributions received by resident companies from other Australian resident companies are effectively received free from tax under the gross-up and tax offset rule.

Dividends paid by Australian resident companies are franked with an imputation credit to the extent that Australian income tax has been paid by the company at the full corporate rate on the income being distributed. The consequences of receiving a franked dividend vary depending on the nature of the recipient shareholder. Tax rules discourage companies from streaming imputation credits to those shareholders who can make the most use of the credits, at the expense of other shareholders.

A company may select its preferred level of franking with reference to its existing and expected franking account surplus and the rate at which it franked earlier distributions. However, under the "benchmark rule," all distributions made within a franking period must generally be franked to the same extent.

A New Zealand company may choose to maintain an Australian franking account and attach Australian franking credits to dividends paid to Australian resident shareholders, if Australian company tax has been paid on that income.

*Resident Corporate Shareholders.* Under the imputation system, resident companies receiving franked distributions gross up the amount received by the amount of its franking credit (the credit equals the tax paid by the paying entity). The grossed-up amount is included in the assessable income of the recipient company. The recipient company is entitled to a tax offset (franking rebate) that may be used against its own tax payable. The tax offset is equal to the amount of the franking credit on the distribution. In addition the recipient company is allowed a franking credit in its own franking account, which may in turn be distributed to the company's shareholders.

The following illustrates the computation of the gross up, the tax offset, the franking account and the cash flow for a company.

		<b>Franking Account</b>	<b>Cash</b>
Trading income	A\$100		A\$100
Dividends received (fully franked)	A\$70	A\$30	A\$70
Franking credit (gross up)	A\$30		
Taxable income	<u>A\$200</u>		
Tax at 30%	A\$60		
Less: Tax offset	<u>A\$30</u>		
Tax payable	<u>A\$30</u>	<u>A\$30</u>	<u>(A\$30)</u>
Net profit for distribution	<u>A\$140</u>	<u>A\$60</u>	<u>A\$140</u>

A recipient of unfranked nonportfolio dividends that in turn pays the unfranked dividends to its nonresident parent company may claim a deduction with respect to such dividends if certain conditions are satisfied.

If a company's entitlement to a tax offset exceeds its tax payable, it can convert the excess franking offset into an equivalent amount of tax loss. The tax loss may then be carried forward indefinitely for deduction in subsequent years. It is no longer mandatory for a company to deduct its prior tax losses against franked dividend income. As a result, the company may use the available franking tax offset on the dividend income to reduce the tax payable to zero and, accordingly, avoid the wasting of its franking offset entitlement.

*Resident Individual Shareholders.* The shareholder includes the dividend received plus the full imputation credit in assessable income. The imputation credit can be offset against personal tax assessed in the same year. Excess credits relating to dividends received are refunded to the shareholder.

*Nonresident Shareholders: Corporate and Noncorporate.* Dividends paid or credited by resident companies to nonresidents are generally subject to a final 30% withholding tax (unless the rate is reduced by a tax treaty), deducted at source on the gross amount of the dividend.

Special rules apply to "conduit foreign income" that flows through Australian companies to foreign investors. Broadly, conduit foreign income is foreign-source income earned by an Australian company that is not taxed in Australia. A distribution that an

Australian corporate tax entity makes to a foreign resident is not subject to dividend withholding tax and is not assessable income, to the extent that the entity declares it to be conduit foreign income.

To the extent that franked dividends are paid to a nonresident, they are free from dividend withholding tax. No refund of an imputation credit is available for a nonresident.

**Foreign Tax Relief.** Australian residents are subject to Australian tax on their worldwide income, but they receive a foreign tax credit for the lesser of foreign taxes paid and Australian tax payable on foreign-source income. For controlled foreign companies (CFCs; see Section E), a modified system of foreign tax credits applies.

### C. Determination of Trading Income

**General.** Taxable income equals assessable income less deductions. Assessable income includes ordinary and statutory income. Statutory income is income that is specifically listed in the tax law as being assessable income.

Significant categories of tax-exempt income include the following:

- Profits (with the possible exception of passive income) from foreign branches of Australian companies located in any country;
- Amounts paid out of income previously taxed under the CFC rules or foreign investment fund (FIF) regime (see Section E); and
- Nonportfolio dividends (paid to corporate shareholders holding at least 10% of the voting power in the payer), regardless of the country of residence of the recipients.

Expenses are deductible to the extent they are incurred in the production of assessable income or are necessary in carrying on a business for the purpose of producing assessable income. However, expenses of a capital nature or those incurred in the production of exempt income are not deductible. Apportionment of expense items having dual purposes is possible.

Eligible expenditure with respect to research and development (R&D) qualifies for a 125% deduction if the annual amount of such expenditure exceeds A\$20,000. Annual expenditure below this threshold qualifies for a 100% deduction. Deduction at a rate of 175% is available for certain R&D expenditure that exceeds a rolling three-year average.

Effective from 1 July 2007, local companies conducting “foreign-owned” R&D may now qualify for the Premium 175% R&D Tax Concession for the incremental increase of expenditure incurred on such R&D over a three-year period, as well as an immediate 100% deduction for eligible R&D expenditure contributing to the premium calculation. Previously, companies could not qualify for these benefits unless the claimant bore the financial risk associated with the R&D activities, had control over the conduct of the activities and enjoyed, at a minimum, effective ownership of the R&D results.

Plant used for R&D is deductible over its effective life. One hundred twenty-five percent of the normal depreciation deduction may be claimed for R&D plant if the R&D expenditure threshold of A\$20,000 is met during the year. Otherwise, the deduction is

equal to the normal depreciation deduction. For plant used partially for R&D, the increased rate applies to the portion of the plant used for R&D purposes.

Fringe benefits tax (see Section D) is deductible. Entertainment expenses are not deductible unless they represent fringe benefits provided to employees. Penalties and fines are not deductible.

Under rules dealing with the forgiveness of commercial debts, the net amount of debts forgiven during an income year (normally the same as an accounting period) reduces the debtor's accumulated revenue tax losses, capital losses, certain undeducted expenditure and cost bases of assets. The net amount forgiven is apportioned among companies related to the debtor in certain circumstances.

**Foreign-Exchange Gains and Losses.** The current regime for the taxation of foreign-currency gains and losses applies generally from 1 July 2003. The measures do not apply to banks and other financial institutions. Broadly, the following are significant aspects of the measures:

- They ensure that foreign-currency gains and losses are brought to account when realized, regardless of whether an actual conversion into Australian currency occurs;
- They ensure that foreign-currency gains and losses generally have a revenue character and are either assessable or deductible for tax purposes when realized;
- They introduce specific translation rules for payments, receipts, rights and obligations denominated or expressed in a foreign currency; and
- They introduce functional currency rules under which an entity that operates predominantly in a particular foreign currency may determine its income and expenses in that currency, with the net results being translated into Australian currency for the purposes of calculating its Australian income tax liability.

**Inventories.** In determining trading income, inventories may be valued at cost, market selling value (the current selling value of an article of trading stock in the particular taxpayer's trading market) or replacement price at the taxpayer's option. The last-in, first-out (LIFO) method may not be used. If the cost method is elected, inventories must be valued using the full-absorption cost method.

**Provisions.** Provisions for leave entitlements of employees and similar accruals are generally not deductible until payments are made. Similarly, provisions for doubtful trading debts are not deductible until the debt, having been previously brought to account as assessable income, becomes bad and is written off during an income year.

### **Capital Allowances (Depreciation)**

*Uniform Capital Allowance Regime.* A capital allowance regime provides deductions to taxpayers for the decline in value of "depreciating assets" held by them during the year.

A "depreciating asset" is defined as an asset with a limited effective life that may be expected to decline in value over the time it is used. Land, trading stock and intangible assets that are not specifically included in the new regime are not considered to be depreciating assets.

The depreciation rate for a depreciating asset depends on the effective life of the asset. Taxpayers may choose to use either a reasonable estimate of the effective life or the effective life determined by the tax authorities. This choice is not available for certain intangible assets. The law prescribes the effective lives of these assets (for example, 15 years for registered patents and 4 years for computers, in general).

Taxpayers may choose the prime cost method (straight-line method) or the declining-balance method for calculating the tax-deductible depreciation for all depreciating assets except intangible assets. For certain intangible assets, the prime cost method must be used. The depreciation rate for a depreciating asset is determined in accordance with the following formulas.

Declining-balance method:	$\frac{200\%}{\text{Asset's effective life}}$
Prime cost method:	$\frac{100\%}{\text{Asset's effective life}}$

The cost of a depreciating asset is generally the amount paid by the taxpayer plus further costs incurred while the taxpayer holds the asset. The depreciable cost of a motor car is subject to a maximum limit (A\$57,123 for the 2007–08 income year). A taxpayer may choose to recalculate the effective life of a depreciating asset if the effective life that was originally selected is no longer accurate as a result of market, technological or other factors.

Certain types of business expenditure of a capital nature may be deducted under the capital allowance regime to the extent that the expenditure is not taken into account elsewhere in the income tax law and is not expressly nondeductible for tax purposes. The deduction is available on a straight-line basis over five years. Expenditure qualifying for the deduction includes the following:

- Expenditure to establish a business structure;
- Expenditure to convert a business structure to a different structure;
- Expenditure to raise equity for a business;
- Expenditure to defend a business against a takeover;
- Expenditure incurred in an unsuccessful takeover attempt;
- Expenditure incurred by a shareholder of a liquidating company that carried on a business; and
- Expenditure incurred to stop carrying on a taxpayer's business.

Taxpayers may choose to pool assets costing less than A\$1,000 as well as assets that have been depreciated to less than A\$1,000 under the declining-balance method. The pool balance is depreciable over four years using the declining-balance method. If the choice is not exercised, the relevant assets are depreciated on the basis of their respective effective lives. Pooling is not available for an entity operating under the Simplified Tax System for small businesses if the entity generates average turnover of less than A\$2 million.

Taxpayers may also choose to allocate expenditure on developing software to a software development pool. The expenditure is deductible over two and one-half years beginning in the year following the year of the expenditure.

*Construction of Buildings.* Capital expenditure on the construction of buildings and structural improvements may be eligible for an annual deduction of either 2.5% or 4% of the construction expenditure, depending on the type of structure and the date when construction began. The applicable deductions are set forth in the following table.

Type of Structure	Date Construction Began	Annual Deduction %
Nonresidential income-producing buildings used for eligible industrial activities	On or after 27 February 1992	4
Other nonresidential income-producing buildings	20 July 1982 to 21 August 1984	2.5
	22 August 1984 to 15 September 1987	4
	On or after 16 September 1987	2.5
Residential income-producing buildings and short-term travel accommodations	22 August 1979 to 21 August 1984	2.5
	22 August 1984 to 15 September 1987	4
	16 September 1987 to 26 February 1992	2.5
	On or after 27 February 1992	4
Other residential income-producing buildings	18 July 1985 to 15 September 1987	4
	On or after 15 September 1987	2.5
Structural improvements	On or after 27 February 1992	2.5

*Disposals of Depreciable Assets.* Depreciation on assets other than buildings is recaptured if the proceeds received on the disposal of an asset exceed its adjustable value. Any amounts recaptured are included in taxable income. If the proceeds received on the disposal of an asset are less than its adjustable value, a deductible balancing adjustment is allowed.

**Relief for Losses.** Tax losses may be carried forward indefinitely against assessable income derived during succeeding years. Losses may not be carried back. A loss is generated after adding back net exempt income.

To claim a deduction for past losses, companies must satisfy either a continuity of ownership test (more than one-half of voting, dividend and capital rights) or a same business test. A modified continuity of ownership test applies to widely held companies. The modified rules simplify the application of the continuity test by providing tracing rules that make it unnecessary to trace the ultimate owners of shares held by certain intermediaries and small shareholdings. As a result of the introduction of the tax consolidation regime (see *Groups of Companies* below), losses are generally not transferable to other group members.

**Groups of Companies.** A tax consolidation regime is available for groups of companies and eligible trusts and partnerships. This regime taxes wholly owned groups of Australian resident companies on a consolidated basis. Consolidation is optional but Australian resident groups have little choice but to consolidate because the grouping provisions under prior law (such as the ability to transfer losses to other group members) have been repealed. The head company of the tax-consolidated group becomes the taxpayer and each subsidiary member of the group is treated as if it were a division of the head company. Transactions between members of a consolidated group are disregarded for Australian income tax purposes. The head company assumes the income tax liability as well as the associated income tax compliance obligations of the group.

A foreign-owned group of Australian entities may also be able to consolidate even if it does not include an Australian holding company. The resulting group is referred to as a multiple entity consolidated (MEC) group. The types of entities that may be members of an MEC group are the same as those for a consolidated group.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Goods and services tax	10
Fringe benefits tax on noncash employee benefits	46.5
Payroll taxes paid by employers (vary by state)	4.75 to 6.85

Customs duty is levied on imports of various products into Australia. Other significant taxes include stamp duty and land tax.

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Financial Transaction Reports Act 1988 requires each currency transaction involving the physical transfer of notes and coins in excess of A\$10,000 (or foreign-currency equivalent) between Australian residents and overseas residents, as well as all international telegraphic and electronic fund transfers, to be reported to the Australian Transaction Reports and Analysis Centre (AUSTRAC). This information is then available to the Commissioner of Taxation, Federal Police, Australian Customs Service and other prescribed law enforcement agencies.

**Transfer Pricing.** Australia's tax law includes measures to ensure that Australian taxable income associated with cross-border transactions is based on arm's length prices. Several methods for determining the arm's length price are available. The Australian Taxation Office provides guidance in a binding tax ruling on the appropriate methods. Broadly, the arm's length methods are divided into the following two groups:

- Traditional transaction methods (the comparable uncontrolled price method, the resale price method and the cost-plus method); and
- Transactional profits methods (the profit-split method and the transactional net margin method).



The most appropriate method should be selected based on the facts and circumstances of the case. It should be based on a practical weighing of the circumstances and the information available to support the various methods. The Australian Taxation Office acknowledges transfer pricing is a difficult issue for many taxpayers and encourages taxpayers who are concerned about their level of risk to enter into Advance Pricing Arrangements.

In a draft discussion paper on cross-border business restructuring, the Australian Taxation Office takes a preliminary view that a threshold issue to be addressed in a business restructuring is whether arm's length parties would have entered into the restructuring arrangement.

**Debt-to-Equity Rules.** Thin-capitalization measures apply to the total debt of Australian operations of multinational groups (including foreign and domestic related-party and third-party debt). The measures apply to the following entities:

- Australian entities that are foreign controlled and foreign entities that either invest directly into Australia or operate a business through an Australian branch; and
- Australian entities that control foreign entities or operate a business through an overseas branch.

For purposes of the measures, in general, 50% ownership by five or fewer entities is required for control.

The measures provide for a safe harbor debt-to-equity ratio of 3:1. Interest deductions are denied for interest payments on the portion of the company's debt exceeding the safe harbor ratio. However, even if the company's debt-to-equity ratio exceeds the safe harbor ratio, interest is fully deductible, provided the company can satisfy an arm's length test. Under this test, the company must establish that an independent party would have incurred the debt. Separate rules apply to financial institutions.

Other measures distinguish debt from equity (debt/equity measures). The debt/equity measures focus on economic substance rather than on legal form. If the debt test contained in the new measures is satisfied, a financing arrangement is generally treated as debt, even if the arrangement could also satisfy the test for equity. The test is complex and goes well beyond an examination of whether a borrower has a noncontingent obligation to repay an amount of principal.

The debt/equity classification measures are relevant to the taxation of dividends (including the imputation requirements), the characterization of payments from nonresident entities, the thin-capitalization regime, and the dividend and interest withholding taxes and related measures.

**Controlled Foreign Companies and Foreign Investment Funds.** Under Australia's controlled foreign company (CFC) rules, the tainted income of a CFC is attributed to its Australian resident owners, which are required to include such income in their assessable income. In general, the tainted income of a CFC is its passive income and income from certain related-party transactions.

Income is generally not attributable if the CFC passes an active-income test. Under this test, the CFC's tainted income may not exceed 5% of the CFC's gross turnover.

Whether an amount earned by a CFC is attributable to Australian residents depends on the country in which the CFC is resident. The CFC rules categorize foreign countries as “listed countries” or “unlisted countries.” A listed country is one whose tax system is considered to be closely comparable to the Australian system. All other countries are included in the unlisted country category.

If a CFC resident in a listed country fails the active-income test, its attributable income includes its tainted income that is designated as concessionally taxed. If a CFC resident in an unlisted country fails the active-income test, its attributable income includes all of its tainted income.

Nonportfolio dividends paid by a foreign company are no longer included in the assessable income of an Australian company. As a result, income derived by a CFC, regardless of whether it is resident in a listed or unlisted country, is exempt from Australian income tax when the income is remitted as dividends to an Australian company. The Australian taxpayer may claim a deduction for expenses incurred in earning the dividend income as well as a credit for foreign taxes paid to the extent that the dividend is paid out of previously attributed profits.

The CFC rules also include the following elements:

- Designated tax concessions are listed for listed countries;
- Control rules provide that five or fewer Australian residents holding at least 50% of a foreign company or having de facto control of a foreign company trigger the CFC rules;
- The CFC rules are also triggered if a single Australian entity holds a 40% interest in a foreign company unless it is established that actual control does not exist; and
- CFC losses are quarantined in the entity that incurred them but, under new rules, effective from 1 July 2008, losses are no longer quarantined on a class-of-income basis.

The foreign investment fund (FIF) provisions apply to interests held by Australian residents in foreign companies and trusts engaged in passive activities. These rules apply to situations in which the CFC rules do not apply because the taxpayer does not hold a controlling interest in the foreign entity.

The foreign investment fund (FIF) provisions set forth rules for the taxation of interests held by Australian residents in foreign companies and trusts engaged in passive activities. These rules complement the CFC rules. They apply to situations in which the CFC rules do not apply because the taxpayer does not hold a controlling interest in the foreign entity.

In general, the FIF regime is designed to prevent tax avoidance by Australian residents that accumulate offshore income subject to tax at low rates and then convert that income into tax preferred capital gains.

Under the FIF regime, income of certain foreign companies and trusts in which Australian residents hold noncontrolling interests, as well as income accumulated offshore in foreign life insurance policies, is attributed to residents.

There are several exemptions, including an active business exemption.

The Board of Taxation is reviewing Australia's international tax rules, which affect Australian businesses and investors investing in overseas businesses and funds. The four tax regimes under discussion cover CFCs, FIFs, transferor trusts and foreign trusts. These regimes are known as the anti-tax-deferral regimes. The review is currently at an early stage, but changes to the law are expected in this area in 2008–09.

**Withholding Taxes.** Interest, dividends and royalties paid to non-residents are subject to Australian withholding tax. The 10% withholding tax rate on interest is generally the same as or lower than the tax treaty rate and is therefore unaffected by any double tax treaties. For dividends, the withholding tax of 30% applies only to the unfranked portion of the dividend. A reduced rate, generally 15%, applies if dividends are paid to residents of treaty countries. An exemption may be available for certain unfranked dividends (for details, see Section B).

A final withholding tax at a rate of 30% is imposed on gross royalties paid to nonresidents. The rate of the withholding tax may be reduced to 10% or 15% under a double tax treaty.

**Demergers.** Tax relief is available for certain entities involved in demergers occurring after 1 July 2002. Capital gains tax exemptions apply if eligible company or fixed-trust groups divide into two separately owned entities. The demerging company (or fixed trust) must dispose of at least 80% of its ownership interests in the demerged entity. However, the underlying ownership interests (the interests of shareholders in the case of companies) must not change as a result of the demerger. The rules also provide to investors optional capital gains tax rollover relief, as well as dividend exemptions, which are available at the option of the demerging entity. The demerger group is also provided with limited capital gains tax relief.

**Value Shifting.** A general value-shifting regime applies to counter certain transactions involving non-arm's-length dealings between associated entities that depress the value of assets for certain income tax and CGT purposes.

## F. Treaty Withholding Tax Rates

The withholding tax rates shown in the table below are generally for outbound payments. Inbound payments may be subject to different rates.

	<b>Dividends (a)</b>	<b>Interest (d)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Argentina	10/15 (b)	12	10/15 (p)
Austria	15	10	10
Belgium	15	10	10
Canada	5/15 (m)	10	10
China	15	10	10
Czech Republic	5/15 (n)	10	10
Denmark	15	10	10
Fiji	20	10	15
Finland (u)	0/5/15 (x)	0/10 (y)	5
France (v)	15	10	10
Germany (r)	15	10	10
Hungary	15	10	10

	<b>Dividends (a)</b>	<b>Interest (d)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
India	15	10	10/15 (c)
Indonesia	15	10	10/15 (c)
Ireland	15	10	10
Italy	15	10	10
Japan (s)	15	10	10
Kiribati	20	10	15
Korea	15	15	15
Malaysia	0/15 (g)	15	15
Malta	15	15	10
Mexico	0/15 (k)	10/15 (j)	10
Netherlands (t)	15	10	10
New Zealand	15	10	10
Norway (w)	0/5/15 (i)	0/10	5
Papua New Guinea	15	10	10
Philippines	15/25 (e)	15	25
Poland	15	10	10
Romania	5/15 (f)	10	10
Russian Federation	5/15 (l)	10	10
Singapore	15	10	10
Slovak Republic	15	10	10
South Africa	0/15 (g)	10	10
Spain	15	10	10
Sri Lanka	15	10	10
Sweden	15	10	10
Switzerland	15	10	10
Taiwan	10/15 (o)	10	12.5
Thailand	15/20 (h)	10/25 (q)	15
United Kingdom	0/5/15 (i)	0/10	5
United States	0/5/15 (i)	0/10	5
Vietnam	15	10	10
Nontreaty countries	30	10	30

- (a) Under Australian domestic law, no withholding tax is imposed on franked dividends. Consequently, for dividends paid by Australian resident companies, the rates in this column apply to unfranked dividends only. Franking of dividends is explained in Section B.
- (b) The 10% rate applies to franked dividends paid to a person holding directly at least 10% of the voting power in the payer.
- (c) The 10% rate applies to specified types of royalties.
- (d) This column does not address exemptions for governments and central banks.
- (e) The 15% rate applies if a tax rebate or credit is granted to the beneficial owner of the dividend.
- (f) The rate is 5% for franked dividends if the recipient is a company that holds directly at least 10% of the capital of the payer.
- (g) The rate is 0% for franked dividends if the recipient is a company that holds directly at least 10% of the capital of the payer.
- (h) The 15% and 20% rates apply to dividends paid to a company that holds directly at least 25% of the capital of the payer of the dividends. The 15% rate applies if the condition described in the preceding sentence is satisfied and if the payer is engaged in an industrial undertaking.
- (i) The rate is 5% or 0% if the recipient holds at least 10% or 80%, respectively, of the voting power in the payer.
- (j) The 10% rate applies if any of the following conditions are satisfied:
- The recipient is a bank or insurance company;
  - The interest is derived from bonds and securities traded on a recognized securities market; or
  - The payer is a bank or the purchaser of machinery and equipment in connection with a sale on credit.
- (k) The 0% rate applies if the recipient is a company holding directly at least 10% of the voting power in the payer.

- (l) The 5% rate applies to dividends paid to a company that holds at least 10% of the capital of the payer and has invested at least A\$700,000 (or the equivalent in Russian rubles) in the payer.
- (m) The 5% rate applies to franked dividends if the beneficial owner of the dividends is a company that controls at least 10% of the voting power in the payer.
- (n) The 5% rate applies to franked dividends.
- (o) The 10% rate applies to franked dividends.
- (p) The 10% rate applies to specified types of royalties.
- (q) The 10% rate applies to interest derived by financial institutions or insurance companies.
- (r) Australia and Germany are expected to agree to a revised double tax treaty in the near future.
- (s) On 3 August 2007, Australia and Japan announced that they have reached agreement in principle on a new income tax treaty based on the Organization for Economic Cooperation and Development (OECD) Model Tax Convention to replace the existing treaty between the countries. Under the proposed treaty, the dividend withholding tax rate will be 0% if the beneficial owner of the dividends is a company that holds at least 80% of the voting power in the payer. The dividend withholding tax rate will be 5% if the beneficial owner of the dividends is a company that holds at least 10% of the voting power in the payer. In other cases, the dividend withholding tax rate will generally be 10%. However, a 15% withholding tax rate will apply to distributions from Real Estate Investment Trusts (REITs) and dividends paid by Japanese companies that are entitled to a deduction for dividends paid to their beneficiaries in computing taxable income in Japan. The withholding tax rates for interest will be 0% for financial institutions and government institutions and 10% in all other cases. For royalties, the withholding tax rate will be 5%.
- (t) Australia and the Netherlands are expected to agree in the near future to a revised double tax treaty containing withholding tax rates matching those in Australia's double tax treaty with the United States, as prescribed by the most-favored-nation clause. Australia has most-favored-nation clauses in its treaties with Austria, Finland, France, Italy, Korea (South), Malaysia, the Netherlands, Norway and Switzerland. Under the most-favored nation clause, Australia and the other treaty country must renegotiate their tax treaty if the withholding tax rates in another of Australia's tax treaties are lower.
- (u) These are the withholding tax rates under the new treaty between Finland and Australia, which is effective from 1 January 2008.
- (v) Australia and France have signed a new income tax treaty that has been implemented as an act under Australian law, but an exchange of notes has not yet taken place. The withholding tax rates under the new treaty cannot enter into effect until 1 January 2009. The dividend withholding rate will be 5% if the dividends are paid to a company that holds at least 10% of the voting power of the payer (0% if the dividends are paid out of taxed profits). The dividend withholding tax rate will be 15% in all other cases. The withholding tax rates for interest will be 0% for financial institutions and 10% in other circumstances. For royalties, the withholding tax rate will be 5%.
- (w) The withholding tax rates under the income tax treaty between Australia and Norway are effective from 1 January 2008 in Australia and from 1 July 2008 in Norway.
- (x) The dividend withholding tax rate is 0% if the beneficial owner of the dividends is a company that holds at least 80% of the voting power in the payer. The dividend withholding tax rate is 5% if the beneficial owner of the dividends is a company that holds at least 10% of the voting power in the payer. In all other cases, the dividend withholding tax rate is generally 15%.
- (y) The withholding tax rate for interest is 0% for financial institutions and 10% in all other cases.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25
Withholding Tax (%)	
Dividends	25 (b)
Interest (from Bank Deposits and Securities only)	25 (c)
Royalties from Patents, Know-how, etc.	20 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- (a) Applies to distributed and undistributed profits.
- (b) In general, applicable to dividends paid to residents and nonresidents. Certain dividends paid to Austrian companies are exempt from tax (see Section B).
- (c) For details, see Section B.
- (d) Applicable to nonresidents.
- (e) The offset of loss carryforwards against taxable income is limited to 75% of taxable income (see Section C).

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** In general, all companies resident in Austria and foreign companies with a branch or permanent establishment in Austria are subject to corporate income tax. (For the scope of income subject to tax, see *Foreign Tax Relief* below.) A company is resident in Austria if it has its legal seat or its effective place of management in Austria. Nonresident companies are subject to tax on their Austrian-source income only.

**Rates of Corporate Income Tax.** The corporate tax rate is generally 25%.

All companies, including those incurring tax losses, are subject to the minimum tax. In general, the minimum tax is €1,750 for an Austrian private limited company (*Gesellschaft mit beschränkter Haftung*, or GmbH) and €3,500 for a stock corporation (*Aktiengesellschaft*, or AG). For banks and insurance companies, the minimum tax is €5,452. Newly established companies are subject to a minimum tax of €1,092 for the first four quarters of their existence. Minimum tax may be credited against corporate tax payable in future years.

**Participation Exemptions.** The Austrian tax law provides for national and international participation exemptions.

*National.* Dividends (including hidden profit distributions) received by an Austrian company from another Austrian company are exempt from corporate income tax (no minimum holding is required). Capital gains derived from the sale of shares in Austrian companies are treated as ordinary income and are subject to tax at the regular corporate tax rate.

*International.* An Austrian company is entitled to the international participation exemption if it holds at least 10% of the share capital of a foreign corporation that is comparable to an Austrian corporation for more than one year. The one-year holding period begins with the legal acquisition of the participation. The international participation exemption applies to dividends and capital gains.

A decrease in the value of an international participation is not tax-deductible, but an Austrian company can opt for such tax-deductibility. If this option is selected, capital gains are subject to tax and decreases in value as well as capital losses are tax-deductible. The option does not affect the tax treatment of dividends. If a decrease in value of an international participation has been previously deducted and if the option for tax-deductibility is not selected, the prior deduction must be reported in the corporate income tax return over a seven-year period.

If dividends are received before the end of the one-year holding period, the tax authorities issue a preliminary tax assessment. After

the one-year holding period is completed, the tax authorities evaluate the applicability of the international participation exemption. If they determine that the international participation exemption applies, they issue a final assessment approving a refund of preliminary tax paid during the one-year holding period.

Under the antiabuse rule, the international participation exemption does not apply if both of the following conditions are met:

- The subsidiary earns primarily the following types of passive income: interest; income from leasing property other than land and buildings; and capital gains (active business test).
- The subsidiary is not subject to income tax of more than 15% in its home country (subject-to-tax provision).

To determine whether a company is a passive company, the Austrian corporate income tax guidelines refer to the company's focus. The focus is determined from an economic perspective, based on the use of capital, employees and the character of the revenues. A company is considered to be a passive company if it derives more than 50% of its revenues from passive operations.

If the passive income and low taxation conditions mentioned above are met, dividends and capital gains are taxed at the normal Austrian corporate tax rate of 25%. Income taxes paid by the foreign subsidiary, as well as withholding taxes imposed on the dividends, are credited against the income tax payable by the Austrian parent company (this represents a switch from the exemption method to the credit method). Abuse may also be assumed if one of the criteria is "strongly given" and the second element is "almost given." "Strongly given" means that the statutory threshold is exceeded by more than 25%. "Almost given" means that the company fails to meet the statutory threshold by less than 25% of such threshold.

*Expenses.* Business expenses are generally tax-deductible. However, an exception applies to expenses that are related to tax-free income. Although dividends from national and international participations are tax-free under the Austrian participation exemption, interest incurred on the acquisition of such participations are tax-deductible, effective from the 2005 fiscal year.

**Capital Gains.** Capital gains derived from sales of shares in Austrian companies are treated as ordinary income and are subject to tax at the regular corporate tax rate. Capital gains derived from sales of shares in non-Austrian companies may be exempt from tax under the international participation exemption (see *Rates of Corporate Income Tax* above); otherwise, they are treated as ordinary income and subject to tax at the regular corporate tax rate.

### **Withholding Taxes on Dividends and Interest**

*Dividends.* In general, dividends paid by Austrian companies are subject to a withholding tax of 25% if they do not represent a repayment of capital. However, this withholding tax does not apply to dividends (other than hidden profit distributions) paid to either of the following:

- An Austrian parent company holding directly an interest of at least 25% in the distributing company.
- A parent company resident in another European Union (EU) country if all of the following requirements are satisfied:



- On the date the dividend is payable, the recipient of the dividends has held directly at least 10% of the distributing company for a period of more than one year and no abuse of law exists;
- The parent company confirms in writing that its activities are not limited to asset administration, that it has own employees and that it uses office premises; and
- The parent company provides a certificate of residence issued by the tax authorities of its home country.

The rate of withholding tax may be reduced for dividends paid to non-EU shareholders in accordance with tax treaties. Depending on the tax treaty, this reduction may be in the form of an up front reduction at source or a refund of withholding tax.

*Interest.* Interest paid on loans (for example, intercompany loans) is not subject to withholding tax in Austria, unless the loan is secured by a mortgage. A 25% withholding tax is imposed on interest income from bank deposits and securities held in Austrian banks. Interest paid to nonresident companies and individuals on bank accounts, savings accounts and similar accounts is exempt if the recipient confirms in writing that he or she is a nonresident. Interest on bonds received by nonresident companies is exempt from tax if the securities are deposited with an Austrian bank and if the owner of the bond confirms in writing that it is a nonresident.

Interest income earned by a company engaged in business in Austria through a permanent establishment is considered business income and must be included in the taxable income of the permanent establishment. For such companies, the 25% withholding tax is credited against corporate income tax due. If the withholding tax exceeds the tax due, it is refunded. The withholding tax is not imposed if a declaration of exemption stating that the interest is taxed as business income is filed with the Austrian tax office.

**Administration.** In principle, the Austrian tax year corresponds to the calendar year. However, other fiscal years are possible. The tax base is the income earned in the fiscal year ending in the respective calendar year. Annual tax returns must be filed by 31 March of the following calendar year. Extensions may be granted.

Companies are required to make payments on account for corporate income tax. The amount is generally based on the amount of tax payable for the preceding year, and payment is made in equal quarterly installments on 15 February, 15 May, 15 August and 15 November.

Interest is levied on the amount by which the final tax for the year exceeds the total of the advance payments if this amount is paid after 30 September of the year following the tax year. To avoid interest, companies may pay the amount due as an additional advance payment by 30 September of the year following the tax year.

**Foreign Tax Relief.** Resident companies are, in general, taxed in Austria on their worldwide income, regardless of where that income is sourced. There are, however, the following three exceptions:

- The Finance Ministry may, at its discretion, allow certain types of income having their source in countries with which Austria has no double tax treaty to be excluded from the Austrian tax computation, or it may allow foreign taxes paid to be credited against Austrian corporate income tax;

- Income earned in countries with which Austria has a double tax treaty is taxed in accordance with the treaty; and
- Dividends and capital gains derived from participations of 10% or more in foreign subsidiaries are exempt from corporate income tax under the international participation exemption (see *Participation Exemptions* above).

### C. Determination of Trading Income

**General.** In general, taxable income is based on the profit or loss shown in the financial statements prepared in accordance with Austrian generally accepted accounting principles. The financial statement profit or loss must be adjusted in accordance with special rules set forth in the tax act. Taxable income is calculated as follows.

Profit per financial statements	X
+ Nondeductible taxes (such as corporate income tax)	X
+ Nondeductible expenses (such as donations and lump-sum accruals)	X
– Special allowances and nontaxable income (intercompany dividends and loss carryforwards*)	<u>(X)</u>
= Taxable income	<u><u>X</u></u>

\* The offset of loss carryforwards against taxable income is limited to 75% of taxable income.

**Inventories.** In determining trading income, inventories must be valued at the lower of cost or market value. Cost may, at the taxpayer's option, be determined using any of the following methods: historical cost; average cost; first-in, first-out (FIFO); or, under certain circumstances, last-in, first-out (LIFO). The highest-in, first-out (HIFO) method is not allowed.

**Provisions.** Accruals for severance payments and pension costs are allowable to a limited extent. Accruals for corporate income tax and lump-sum accruals are not deductible for tax purposes. Provisions with a term of 12 months or more are tax-deductible at a rate of 80%, except for accruals for severance payments and pension costs, which are tax-deductible to the extent of 100% of their tax value.

**Depreciation.** Depreciation must be calculated based on the useful life of the asset using the straight-line method. For certain assets, such as buildings and passenger cars, the tax law provides fixed rates. The following are some of the applicable rates.

Asset	Rate (%)
Buildings	2 to 3
Office equipment	10 to 25
Motor vehicles	12.5
Plant and machinery	10 to 20

**Research and Development.** Companies may claim a research and development (R&D) bonus equal to 8% of certain expenses for research and experimental development (material costs, labor costs, energy costs and attributed interest). This bonus may be in the form of a tax credit or a cash payment.

Instead of the R&D bonus, companies may claim an additional tax deduction of 25% of the expenses described above. If R&D expenses during the year exceeded the average R&D expenses in the preceding three years, the percentage of the deduction for the amount of the excess is 35%. To claim this additional deduction of 35%, a company must obtain a certificate from the Austrian Ministry for Economic Affairs, which confirms the value to the Austrian economy of the invention. This certificate is not required if patent protection for the invention has been obtained.

**Training.** Similar to R&D expenses, a bonus of 6% can be claimed for training expenses. Instead of the bonus, the company can deduct an additional, fictitious expense of 20% of the training expenses in its tax return.

**Relief for Losses.** Losses incurred by resident companies after 1991 may be carried forward without limitation. The offset of loss carryforwards against taxable income is limited to 75% of the taxable income. The remaining balance of the loss carryforward may be offset against income in future years, subject to the same 75% limitation.

The loss carryforward is attributable to the company, not to the shareholders. Consequently, a change in shareholders does not affect the loss carryforward, provided no corresponding substantial change in the business and management of the company occurs. Losses may not be carried back. Foreign companies with permanent establishments in Austria may claim tax losses only under certain circumstances.

**Groups of Companies.** The group taxation regime allows parent and subsidiaries to consolidate their taxable income. The head of the fiscal unity must be an Austrian corporate entity that holds more than 50% of the capital and voting rights in the subsidiary since the beginning of the subsidiary's fiscal year. The shareholding can be direct, or it can be held indirectly through a partnership, corporation or a joint venture. Only corporations (not partnerships) qualify as group members. If the more than 50% requirement is satisfied, 100% of the taxable income (profit or loss) of domestic group members is allocated to the taxable income of the group parent, regardless of the percentage of the shareholding in the subsidiary. No actual profit or loss transfer takes place. An application that is binding for three years must be filed with the tax authorities.

Group taxation also allows a cross-border tax consolidation if the foreign subsidiary is directly held by an Austrian parent (tier one) and if the type of entity is comparable to an Austrian corporation from a legal perspective. Losses from foreign group members can be deducted from the Austrian tax base in proportion to the shareholding only. Profits of a foreign group member are generally not included in the Austrian parent's income.

To avoid double utilization of losses of a foreign group member, foreign losses that have been deducted from income of the Austrian group shareholder is added in Austria, if the losses can be offset in the foreign jurisdiction at a subsequent time. Consequently, if the foreign country takes into account the losses in subsequent years (as part of a loss carryforward), the tax base in Austria is increased by that amount in order to avoid a double dip.

Foreign losses must also be added to the Austrian income tax base if the foreign subsidiary leaves the group. Relief is provided only in the event of a liquidation or insolvency.

If an Austrian participation is acquired and if the acquired company becomes part of the group, good will depreciation over a period of 15 years is possible. The good will is computed as the spread between the equity of the acquired company (pro rata to the acquired shares) and the acquisition price for the shares. This spread is reduced by hidden reserves attributable to nondepreciable assets (primarily real estate). The basis for the good will depreciation is capped at 50% of the acquisition cost.

Depreciation to the fair market value of a participation within the group is tax-neutral.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax	
Standard	20
Reduced	10
Payroll taxes, paid by employer	
Family allowance fund; varies by state	4.88 to 4.96
Community tax	3
Real estate sales tax (including 1% registration fee)	4.5
Capital duty, on contributions to capital of companies	1
Stamp duties, on certain legal transactions, such as loans, leases and hire contracts	0.8 to 1.5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** No restrictions are imposed on the transfer of nominal share capital, interest and the remittance of dividends and branch profits. Royalties, technical service fees and similar payments may be remitted freely, but routine documentation may be required.

**Debt-to-Equity Rules.** Austrian law does not provide special debt-to-equity rules. Although, in general, shareholders are free to determine whether to finance their company with equity or loans, the tax authorities may reclassify loans granted by shareholders, loans granted by group companies, and loans granted by third parties guaranteed by group companies as equity, if funds are transferred under legal or economic circumstances that typify equity contributions, such as the following:

- The equity of the company is insufficient to satisfy the solvency requirements of the company, and the loan replaces equity from an economic point of view;
- The company's debt-to-equity ratio is significantly below the industry average;
- The company is unable to obtain any loans from third parties, such as banks; or
- The loan conveys rights similar to shareholder rights, such as profit participations.

If a loan is reclassified (for example, during a tax audit), interest is not deductible for tax purposes, withholding tax on hidden profit distributions may become due, and capital duty of 1% on the loan amount is imposed.

**Transfer Pricing.** Austria has accepted the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines. Under these guidelines, all transactions with related parties must be conducted at arm's length. If a transaction is considered not to be at arm's length, the transaction price is adjusted for corporate income tax purposes. This adjustment may be deemed to be a hidden profit distribution subject to withholding tax or a capital contribution subject to capital duty.

## F. Treaty Withholding Tax Rates

The following summary is intended purely for orientation purposes; it does not reflect the various special provisions of individual treaties or the withholding tax regulations in domestic tax law.

	Dividends		Interest (a)		Royalties	
	A %	B %	C %	D %	E %	F %
Algeria (t)	15	5	10	10	10	10
Argentina	15	15	12.5	12.5	15	15
Armenia	15	5	10	10	5	5
Australia	15	15	10	10	10	10
Azerbaijan	15	5/10 (h)	10	10	10 (i)	5/10 (i)
Belarus	15	5	5	5	5	5
Belgium	15	15	15	15	0	10
Belize	15	5	0	0	0	0
Brazil	15	15	15	15	15 (f)	15 (f)
Bulgaria	0	0	0	0	0	0
Canada	15	5	10 (j)	10 (j)	10 (k)	10 (k)
China	10	7	10	10	10	10
Croatia	15	0	5	5	0	0
Cuba (t)	15	5	10	10	5	5
Cyprus						
From Cyprus	0	0	0	0	0	0
From Austria	10	10	0	0	0	0
Czechoslovakia (e)	10	10	0	0	5	5
Denmark	10	10	0	0	0	10
Egypt						
From Egypt	15	15	15	(b)	0	0
From Austria	10	10	0	0	0	0
Estonia	15	5	10	10	5/10 (q)	5/10 (q)
Finland	10	10	0	0	5	5
France	15	0	0	0	0	0
Georgia	10	0/5	0	0	0	0
Germany	15	5	0	0	0	0
Greece	(b)	(b)	0 (l)	0 (l)	0	10
Hungary	10	10	0	0	0	0
India	(b)	(b)	(b)	(b)	(b)	(b)
Indonesia	15	10	10	10	10	10
Iran	10	5	5	5	5	5
Ireland						
From Ireland	15	0	0	0	0	0
From Austria	10	10	0	0	0	10
Israel	25	25	15	15	10	10

	Dividends		Interest (a)		Royalties	
	A	B	C	D	E	F
	%	%	%	%	%	%
Italy	15	15	10	10	0	10
Japan	20	10	10	10	10	10
Kazakhstan	15	5	10	10	10	10
Korea	15	5	10	10	10 (n)	10 (n)
Kuwait	0	0	0	0	10	10
Kyrgyzstan	15	15	10	10	10	10
Liechtenstein	15	15	10	10	10	10
Lithuania	15	5	10	10	10	5
Luxembourg	15	5	0	0	0	10
Malaysia						
From Malaysia	special arrangements		15	15	10 (j)	10 (j)
From Austria	10	5	15	15	10	10
Malta						
From Malta	special arrangements		5	5	10	10
From Austria	15	15	5	5	10	10
Mexico	10	5	10	10	10	10
Moldova	15	5	5	5	5	5
Mongolia	10	5	10	10	5/10	5/10
Morocco	10	5	10	10	10	10
Nepal	15	5/10 (r)	15 (s)	15 (s)	15	15
Netherlands	15	5	0	0	0	10
Norway	15	5	0	0	0	0
Pakistan	(b)	10 (o)	(b)	(b)	20	20
Philippines	25	10	10/15	10/15	10/15	10/15
Poland	15	5	5	5	5	5
Portugal	15	15	10	10	5	10
Romania	15	15	10	10	10	10
Russian						
Federation	15	5	0	0	0	0
San Marino	15	0	0	0	0	0
Singapore	10	0 (m)	5	5	5	5
Slovak Republic	10	10	0	0	5	5
Slovenia	15	5	5	5	0	10
South Africa	15	5	0	0	0	0
Spain	15	10	5	5	5	5
Sweden	10	5	0	0	0	10
Switzerland	15	0	0	0	5	5
Tajikistan	0	0	0	0	0	0
Thailand						
From Thailand	(b)	15/20	10/25	10/25	15	15
From Austria	(b)	10	10/25	10/25	15	15
Tunisia	20	10	10	10	15 (p)	15 (p)
Turkey	35	25	15	15	10	10
Turkmenistan	0	0	0	0	0	0
Ukraine	10	5	2/5	2/5	5	5
USSR (d)	0	0	0	0	0	0
United Arab						
Emirates	0	0	0	0	0	0
United Kingdom	15	5	0	0	0	10
United States	15	5	0	0	0 (g)	0
Uzbekistan	15	5	10	10	5	5
Nontreaty countries	25	25	25	0 (c)	20	20

A General.

B Dividends received from subsidiary company. Shareholding required varies from 10% to 95%, but generally is 25%.

- C General.  
 D Mortgages.  
 E General.  
 F Royalties from 50% subsidiary.
- (a) Under domestic tax law, a 25% withholding tax is imposed only on interest income from bank deposits and securities. However, interest paid to nonresidents is generally not subject to withholding tax. For details, see Section B.
- (b) No reduced rate applies.
- (c) No withholding tax is imposed, but the income is subject to tax at the regular corporate rate.
- (d) Austria is honoring the USSR treaty with respect to the republics comprising the Commonwealth of Independent States (CIS), except for those republics that have entered into tax treaties with Austria. Austria has entered into tax treaties with Armenia, Azerbaijan, Belarus, Kyrgyzstan, Moldova, the Russian Federation, Ukraine and Uzbekistan. The withholding tax rates under these treaties are listed in the above table.
- (e) Austria is honoring this treaty with respect to the Czech and Slovak Republics.
- (f) Trademark royalties are subject to a 25% withholding tax. The withholding tax rate is 15% for royalties paid for literary, artistic and scientific items.
- (g) The rate is 10% for royalties paid for the use of films or other means of production used for radio or television.
- (h) The 5% rate applies if the participation of the recipient of the dividends exceeds US\$250,000. The 10% rate applies if the participation of the recipient of the dividends exceeds US\$100,000 but does not exceed US\$250,000.
- (i) The rate is 5% for royalties paid for technologies not older than three years.
- (j) The withholding tax rate is 15% for royalties paid for literary and artistic items.
- (k) Royalties paid for computer software, patents and know-how are exempt if the royalties are taxed in the state of residence of the recipient.
- (l) Interest on government bonds may be taxed in the issuing state only. Interest paid to parent companies holding more than 50% of the capital of the subsidiary are subject to a 10% withholding tax.
- (m) This rate applies to dividends received from a 10%-subsidiary.
- (n) The rate is 2% for amounts paid for the use of commercial or scientific equipment.
- (o) The rate is 20% for dividends paid by non-industrial Pakistani corporations.
- (p) The rate is 10% for royalties paid for literary, artistic and scientific items.
- (q) The 5% rate applies to amounts paid for the use of industrial or scientific equipment.
- (r) The 5% rate applies to dividends received from a 25%-subsidiary; the 10% rate applies to dividends received from a 10%-subsidiary.
- (s) The rate is 10% for interest paid to a bank if the interest arises from the transacting of bank business and if the recipient is the beneficiary of the interest.
- (t) This treaty has been signed, but it has not yet been ratified.

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## AZERBAIJAN

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*Because of the rapidly evolving economic situation in Azerbaijan, readers should obtain updated information before engaging in transactions.*

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**A. At a Glance**

Corporate Profits Tax Rate (%)	22
Capital Gains Tax Rate (%)	22
Permanent Representation Tax Rate (%)	22
Withholding Tax (%)	
Dividends	10 (a)
Interest	10 (a)
Royalties from Patents, Know-how, etc.	14 (b)
Management Fees	10 (b)
Income from International Transport of Goods by Sea	6 (b)
Insurance or Financial Lease Payments	4 (b)
Payments of Other Azerbaijani-Source Income to Foreign Companies	10 (b)
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) These are final withholding taxes applicable to payments to Azerbaijani and foreign legal entities.

(b) This is a final withholding tax applicable to payments to foreign legal entities.

**B. Taxes on Corporate Income and Gains**

**Corporate Profit Tax.** Enterprises carrying on activities in Azerbaijan, including enterprises with foreign investment, joint ventures and legal entities operating through a permanent representation, are subject to tax.

Azerbaijani legal entities are subject to tax on their worldwide income. For tax purposes, Azerbaijani legal entities are entities incorporated in Azerbaijan, including 100%-owned subsidiaries of foreign companies.

Foreign legal entities are subject to tax on profits earned through a permanent representation (representative office) only. A permanent representation is defined as the following: any organization or natural person who represents a foreign legal entity in Azerbaijan; a bureau, office or agency; a location where activities are carried out relating to the development of natural resources; the rendering of consultation services; or a fixed base used for entrepreneurial activities for a cumulative amount of 90 days during any 12-month period.

The Azerbaijan Law on the Protection of Foreign Investments allows foreign investment in various forms, including investment through 100% foreign-owned subsidiaries, share participations in joint stock companies and in joint ventures with Azerbaijani legal entities and citizens, permanent representations and other types of participations.

**Tax Rate.** All entities operating in Azerbaijan are subject to corporate profit tax at a rate of 22%.

**Capital Gains.** Capital gains are included in taxable income and taxed at the regular rate.

**Administration.** The tax year is the calendar year. The tax year for newly created enterprises or permanent representations of foreign legal entities runs from the date of formation through 31 December of the year of formation.



All entities operating in Azerbaijan must make advance payments of corporate profit tax by the 15th day following the end of each quarter. Each advance payment must equal at least one-quarter of the profit tax liability for the prior tax year. Alternatively, the amounts of the advance payments may be determined by multiplying the company's revenues for the quarter by the company's effective tax rate for the prior year. The effective tax rate is equal to tax as a percentage of revenues.

If, at the end of the tax year, it is determined that the total of the advance payments exceeds the tax due for the year, the excess may be credited against future tax obligations or refunded. In practice, however, the tax authorities rarely, if ever, issue refunds. Consequently, entities generally credit overpayments against future taxes.

**Dividends.** Dividends paid are subject to income tax withholding at a rate of 10%. This is considered a final tax and companies do not include the dividends in taxable profits.

**Foreign Tax Relief.** Foreign income tax paid by taxpayers in Azerbaijan on income derived from sources outside Azerbaijan may be credited against Azerbaijani tax imposed on the same income, limited to the amount of Azerbaijani tax imposed on such income. In determining the amount of the allowable foreign tax credit, it is unclear if a limitation based on the country of source is imposed or if all foreign-source income is pooled.

### **C. Determination of Trading Income**

**General.** Taxable profit is determined by computing the profit or loss from business activities and then adding income from non-trading operations, such as leasing income and capital gains, but excluding dividends received. Income received in foreign currency is converted into manats at the daily exchange rate determined by the National Bank of Azerbaijan.

Statutory norms limit the deductions for certain categories of expenses, such as business travel and repair expenses. Expenses for meals and entertainment as well as for the providing of food and housing to employees are disallowed except for companies providing therapeutic nourishment items, milk and similar products to their employees. Such deductions will be allowed within norms, which have not yet been introduced by the government.

Foreign legal entities doing business through a permanent representation in Azerbaijan are taxed on actual profits. If actual profits cannot be determined, the tax authorities may determine taxable profits based on either income or expenses, with a deemed profit margin of 20%.

**Tax Depreciation.** Fixed assets, other than buildings, are subject to depreciation by a group method. Under this method, fixed assets are allocated to groups, and the groups are depreciated in aggregate. Depreciation rates, which are specified by law, are applied to the aggregate book values for each of the groups. The depreciable balance for a group is reduced by the depreciation accrued for the year by the group. If any assets of a group are sold during the year, the depreciable balance of the group is reduced by the residual value of such assets. The profit or loss on the sale of such assets is separately determined.

An acquisition of assets under a finance lease is treated as a loan from the lessor to the lessee and a purchase of assets by the lessee. The lessee may then claim depreciation on the assets.

**Relief for Losses.** An enterprise incurring a loss in a tax year may carry forward the loss to the following five years, without limitation on the amount, to offset the profit in such following years.

**Groups of Companies.** There are no provisions permitting related enterprises to offset profits and losses among members of a group.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on goods sold and services rendered, in Azerbaijan; the tax law contains specific rules for determining when services are deemed to be provided in Azerbaijan; Azerbaijani taxpayers that make payments to entities that are not registered taxpayers in Azerbaijan for goods and services provided in Azerbaijan must calculate VAT on the payments	18
Assets tax, on the annual average net book value of fixed assets	1
Import tariffs	0 to 15

#### E. Foreign-Exchange Controls

The manat is a nonconvertible currency outside Azerbaijan. Enterprises may buy or sell foreign currency through authorized banks or foreign-exchange offices in Azerbaijan.

To receive foreign-currency income in Azerbaijan, an enterprise must obtain a license issued by the National Bank of Azerbaijan.

#### F. Treaty Withholding Tax Rates

Azerbaijan currently considers none of the tax treaties of the former USSR to be in force. Azerbaijan has entered into tax treaties with various countries.

The withholding rates under Azerbaijan's ratified treaties are listed below. Because of recent reductions in domestic withholding tax rates, the tax treaties may now specify rates that are the same as, or in excess of, domestic rates and, consequently, offer little or no savings with respect to withholding taxes. The rates in the table reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends %	Interest %	Royalties %
Austria	5/10/15	10	5/10
Belarus	15	10	10
Belgium	5/10/15	0/10	0
Canada	10/15	10	5/10
China	10	10	10
Czech Republic	8	10	10
Finland	5/10	10	5/10
France	10	10	5/10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Georgia	10	10	10
Germany	5/15	10	0
Kazakhstan	10	10	10
Latvia	5/10	10	5/10
Lithuania	5/10	10	10
Moldova	8/15	10	10
Norway	10/15	10	10
Poland	10	10	10
Romania	5/10	8	10
Russian Federation	10	10	10
Turkey	12	10	10
Ukraine	10	10	10
United Arab Emirates	5/10	0/7	5/10
United Kingdom	10/15	10	5/10
Uzbekistan	10	10	10
Nontreaty countries	10	10	14

Treaties with Italy, Luxembourg and Pakistan are in the ratification stage. Azerbaijan has initialed tax treaties with Bulgaria, Denmark, Estonia, Kuwait, the Netherlands, Oman, Qatar, Serbia and Montenegro and Sweden. Azerbaijan is negotiating tax treaties with Greece, Hungary, India, Iran, Kyrgyzstan, San Marino and Saudi Arabia.

## BAHAMAS

(Country Code 1)

### NASSAU

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### **A. At a Glance**

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	0

## **B. Taxes on Corporate Income and Gains**

No taxes are levied on corporate income or gains.

## **C. License Fees and Other Duties**

The rates of the license fees and other duties discussed below apply for the year ending 30 June 2007.

**Business License Fees.** For corporations designated resident for exchange-control purposes, business income within the Bahamas is subject to an annual license fee that varies according to turnover and gross profit. Businesses with turnover of B\$50,000 or less are exempt from paying business license fees. Businesses with turnover of B\$50,001 to B\$250,000 pay annual fees ranging from B\$250 to B\$1,250. Businesses with turnover of B\$250,001 to B\$28 million pay fees ranging from 0.5% to 1.5% of turnover. Businesses with turnover in excess of B\$28 million pay fees ranging from 0.5% to 1.5% of turnover. For businesses with turnover in excess of B\$28 million and a gross profit percentage of more than 75% of sales, the fees can range up to the greater of B\$500,000 or 1.5% of turnover.

Businesses with gross profits exceeding B\$250,000 must obtain a certificate from a qualified professional accountant verifying the accuracy of the amount of turnover and gross profits. If turnover is B\$500,000 or more, certification by a Bahamas Institute of Chartered Accountants member must accompany the Annual Business License Application for an Existing Business Form.

Business license fees must be paid by 30 April each year, and proof of payment of real property tax must be produced before the license is issued.

Corporations regulated by specific legislation may not be subject to this fee.

**Bank and Trust Company License Fees.** Bank and trust company license fees vary according to the type of license. The maximum annual license fee is B\$310,000 per license. A bank or trust company may hold more than one category of license at one time.

**International Business Companies.** International business companies (IBCs) pay an annual license fee based on authorized capital. Government fees related to the creation of an IBC equal B\$330. The maximum annual license fee is B\$1,000. IBCs are exempt from all other taxes and stamp duties for a period of 20 years from the date of incorporation, except for transactions involving real estate in the Bahamas. IBCs are normally created through service providers that charge separate fees for their services.

**Limited Duration Companies.** Limited duration companies (LDCs) pay an application fee of B\$200 and an annual license fee based on authorized capital. LDCs may be classified as partnerships for U.S. tax purposes. By complying with certain formalities, an existing IBC may change its status to an LDC.

**Insurance Companies.** Insurance companies that are incorporated in the Bahamas pay stamp tax on authorized capital (for details, see Section D). They also pay the fees described below.

Resident insurance companies that write local business pay an initial registration fee of B\$1,000 and a premium tax of 3% of gross premiums collected each quarter. The minimum tax is B\$25.

Offshore insurance companies pay an initial registration fee of B\$2,500 and an annual fee of B\$2,500 in subsequent years. They also pay an annual fee of B\$650 for each licensed resident underwriting management firm that provides the company with underwriting management and similar services. Offshore insurance companies are exempt from all other taxes for a period of 15 years from the date of registration.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Customs duties, on imported items; exemptions may be granted to businesses licensed under certain legislation; rate varies by type of item (average rate)	35%
Hotel guest tax, on room rate	12% plus B\$10 per additional adult per day
Stamp tax	
On property conveyances; rate depends on selling price	2% to 10%
On remittances of funds in foreign currency from a Bahamian currency source	1.5%
On imported items (average rate)	7%
On authorized capital of a domestic limited company (payable at time of incorporation)	
First B\$5,000	1.2%
Each additional B\$1,000	0.3%
Real property tax; application of tax varies depending on appraised value, location, nationality of owner and development of property	1% to 2%
National insurance contributions on weekly wages up to B\$400 or on monthly wages up to B\$1,733; for employees earning B\$60 or more a week; paid by	
Employer	5.4%
Employee	3.4%

#### E. Foreign-Exchange Controls

Corporations doing business in the Bahamas fall into the following two categories: resident and nonresident.

A resident company is one dealing in or holding assets in the Bahamas. Business is carried out in Bahamian dollars. All transactions requiring foreign currency need prior approval of the Central Bank of the Bahamas to convert Bahamian dollars into another currency.

A nonresident company is one whose shareholders are not designated residents of the Bahamas and whose principal business activity takes place outside the Bahamas. Bank accounts in all

currencies other than the Bahamian dollar can be operated free of any exchange controls. Shares of nonresident companies incorporated under the Companies Act cannot be transferred without the prior permission of the Central Bank of the Bahamas. Exchange-control regulations do not apply to companies incorporated under the International Business Companies Act.

Nonresident companies are subject to an annual fee of B\$300.

## F. Tax Treaties

The Bahamas has not entered into a tax treaty with any other jurisdiction. However, on 25 January 2002, the Bahamas entered into a Tax Information Exchange Agreement (TIEA) with the United States. The TIEA entered into force on 1 January 2004 for criminal matters, and enters into force on 1 January 2006 for civil matters.

## BAHRAIN

(Country Code 973)

### MANAMA

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### A. At a Glance

Corporate Income Tax Rate (%)	0*
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	0

\* Oil and gas companies are subject to a special income tax (see Section B).

### B. Taxes on Corporate Income and Gains

Except for the income tax levied on oil and gas companies, no taxes are levied on corporate income or gains. Oil and gas companies are subject to tax on income derived from the sale of finished or semifinished products manufactured from natural hydrocarbons in Bahrain and from the sale of such raw materials if produced from the ground in Bahrain. The rate of tax is 46%.

### C. Customs Duties

The Gulf Cooperation Council (GCC) countries announced the unification of customs duties, effective from 1 January 2003. The GCC countries are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The guidelines for implementation of the unified tariff are being developed.

Bahrain is applying the unified tariff in accordance with the H.S. Codes, issued by the World Customs Organisation (WCO). Under the unified customs tariff, for all products, except for tobacco and tobacco-related products, customs duties are calculated by applying percentage rates. For tobacco and tobacco-related products, the customs duty equals the higher of the following: an amount calculated by applying a rate of at least 100% to the value of the product; or an amount based on the quantity or weight.

Under the customs tariff, products are generally divided into four groups — free duty, 5% rate, 100% rate and 125% rate.

### D. Foreign-Exchange Controls

Bahrain does not impose foreign-exchange controls.

### E. Tax Treaties

Bahrain has entered into tax treaties with the following countries: Algeria; Belarus; China; Egypt; France; Italy; Lebanon; Malaysia; Morocco; Singapore; Thailand; and Yemen.

Bahrain has signed tax treaties with Iran, Pakistan, Sudan and Turkey, but these treaties are not yet in force.

## BARBADOS

(Country Code 1)

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	0
Branch of Nonresident Corporation (%)	25
Withholding Tax (%)	
Payments to Nonresidents	
Dividends	15 (b)
Interest	15 (b)
Royalties	15 (b)
Rents	25
Management and Technical Services	15 (b)
Payments to Resident Individuals	
Dividends	12.5 (b)
Interest	12.5 (b)
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	9

- (a) Net rental income derived from residential property is subject to tax at a rate of 15%.
- (b) This is a final tax.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies and unincorporated associations that are resident in Barbados are subject to corporate tax. Resident companies are subject to tax on their worldwide income regardless of whether it is remitted to Barbados. Nonresident companies carrying on business through a branch pay tax only on Barbados-source income. Income is considered Barbados-source if the property that constitutes the source is physically located in Barbados.

A company is considered to be resident in Barbados if its management and control are located in Barbados.

**Rates of Corporate Tax.** All domestic companies, including branches of nonresident companies, are subject to tax at a basic rate of 25%. Income derived from the rental of residential property is subject to tax at a rate of 15%. Income derived from Barbados government securities by domestic companies is taxed at a rate of 12.5%.

The following are the tax rates for nonresident companies.

Income	Rate (%)
Interest	15
Royalties	15
Dividends from taxed profits	15
Management and technical aid fees	15
Services other than management	25
Income from Barbados government securities	0



A branch operating in Barbados pays an additional 10% on its after-tax profits if those profits are remitted or deemed to be remitted.

The following are the tax rates for companies established in the International Business and Financial Services Sector.

<b>Types of Companies</b>	<b>Rate (%)</b>
International business companies	2.5 reducing to 1
Offshore banks	2.5 reducing to 1
International Societies with Restricted Liability	2.5 reducing to 1
Exempt insurance companies	0
Exempt insurance management companies	0

No tax is required to be withheld from the payment of dividends, interest, royalties, management fees and rents if paid to nonresidents by companies operating in the International Business and Financial Services Sector.

*Foreign-Currency Earnings Credit.* Companies subject to the Income Tax Act may claim a tax credit with respect to foreign-currency earnings derived from qualifying overseas construction projects or qualifying overseas professional services, including qualifying insurance activities. The tax credit may reduce the effective tax rate to 1.75%.

*Small Business Development Act.* Under the Small Business Development Act, small businesses qualify for the following tax benefits:

- Exemption from withholding tax on dividends or interest paid;
- Exemption from import duty on plant and equipment; and
- Exemption from stamp duty on the execution and registration of financial documents.

Only income directly related to the business qualifies for the above tax benefits.

To qualify as a small business, a company must meet the following requirements:

- Its authorized capital does not exceed BDS\$1 million;
- Its annual sales do not exceed BDS\$2 million;
- It does not have more than 25 employees; and
- It is not a wholly owned or majority-owned subsidiary in a group of companies.

**Capital Gains.** Capital gains are not taxed in Barbados.

**Administration.** The fiscal (income) year extends from 1 January to 31 December. Tax is calculated on the profits for the accounting period that ends during the fiscal year.

A corporation is required to determine its own tax liability and to prepare and file a corporation tax return. Corporations with year-ends from 1 January to 30 September must prepay tax by 15 September and file their returns by 15 March of the following year. If the year-end is after 30 September, the tax must be prepaid on 15 December of the income year and on the following 15 March. The return is filed 15 June of the year following the income year. Each tax prepayment must be 50% of the previous year's tax. Any balance of tax due is paid when the return is filed.

The Commissioner of Inland Revenue may levy a penalty of BDS\$100 plus 10% of tax payable and interest of 1% a month for failure to file a return and pay tax due, and a penalty of 10% and interest of 0.5% a month for failure to prepay corporate tax.

**Dividends.** Dividends received by a resident company from another resident company are not taxable.

Under a proposal, effective from the 2007 income year, dividends received from a nonresident company are not subject to tax in Barbados if the Barbados company owns 10% or more of the share capital of the nonresident company and if the shareholding in the nonresident company is not held as a portfolio investment. However, this measure has not yet been enacted.

**Foreign Tax Relief.** A tax credit is allowed for taxes paid to foreign jurisdictions by Barbados resident companies on profits, income or gains earned from such foreign jurisdictions, regardless of whether Barbados has entered into a double tax treaty with the foreign jurisdiction. An underlying tax credit is also allowed with respect to foreign dividends if the Barbados company owns at least 10% of the capital of the foreign company. Some form of unilateral relief may be granted on income arising from British Commonwealth countries that provide reciprocal relief.

### C. Determination of Trading Income

**General.** Taxable income is determined on the basis of accounts prepared in accordance with International Financial Reporting Standards, subject to specific adjustments identified in the Income Tax Act.

**Inventories.** The authorities generally accept a method of valuation of inventory that conforms to standard accounting practice in the trade or business, provided it is applied consistently. Average cost or first-in, first-out (FIFO) are the generally accepted methods.

**Provisions.** Reserves or provisions of a general nature are not allowable. Write-offs of specific amounts or balances are generally allowed, provided the Inland Revenue is satisfied that they are irrecoverable.

**Tax Depreciation.** Depreciation and amortization reported in the financial statements are not allowed as deductions in calculating taxable income. However, a company may claim capital allowances. Annual allowances of between 5% and 33 $\frac{1}{3}$ % are given on the original cost of fixed assets, calculated on a straight-line basis. An initial allowance of 20% is given on the cost of equipment. Industrial buildings qualify for an initial allowance of 40% and an annual allowance of 4% of the cost. An allowance of 1% is given on the improved value of commercial buildings. Fifty per cent of expenditure on intellectual property is deductible over a 10-year period.

An investment allowance of 20% is granted on the cost of capital expenditure on new plant and machinery to be used in a basic industry. A 40% allowance is granted for new plant and machinery to be used in manufacturing and refining sugar and in manufacturing products from clay and limestone.

Persons who export outside the Caribbean Community and Common Market (CARICOM) also qualify for an investment allowance of 40% of the cost of new plant and machinery purchased during the tax year.

The investment allowance is not deductible from the cost of the asset for the purpose of determining the annual allowance.

**Relief for Losses.** Losses may be carried forward nine years to offset income derived in those years. Losses may not be carried back.

**Groups of Companies.** A member of a group of companies (the surrendering company) may surrender current trading losses to another member of the group (the claimant company). The claimant company may then claim a deduction for the losses in calculating its taxable income.

To qualify for group relief, the surrendering company and the claimant company must be resident in Barbados and must be members of the same group throughout the fiscal year for which group relief is claimed. Two companies are members of the same group if one is a 75% subsidiary of the other or both are 75% subsidiaries of a third company. In determining whether a company is a 75% subsidiary of another company, share capital is excluded if profits from sales of such shares would be trading receipts of the direct owner of the shares. Share capital is also excluded if it is owned directly or indirectly in a company not resident in Barbados. In addition, the parent company must be beneficially entitled to at least 75% of the profits available for distribution to shareholders of the subsidiary and to at least 75% of the subsidiary's assets available for distribution to shareholders of the subsidiary on a winding up.

Trading losses may not be surrendered to the extent they include the following:

- The surrendering company's capital allowances; and
- Expenses payable to a group member that are claimed as deductions but are not included in the income of that group member for the same fiscal year.

Group relief is available only if the claimant company has used its capital allowances and offset its loss carryforwards against its current profits. A claim for group relief must be made within two years of the end of the surrendering company's fiscal year, and must be consented to by that company. Group relief is not available to international business companies, exempt insurance companies, societies with restricted liability, offshore banks and other companies granted special tax concessions, excluding companies operating under the Hotel Aids Act. Groups of companies that owe taxes or national insurance contributions are also ineligible for group relief.

Group consolidated returns may not be filed with the tax authorities.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on the supply of goods and services in Barbados and on goods imported into Barbados	
Standard rate	15
Hotel accommodation	7.5
Basic food items	0
Excise tax, on imports of vehicles; this tax is imposed in addition to the VAT	46.95 to 120
Import duty	5 to 20
National insurance contributions, on monthly insurable earnings up to BDS\$3,390; paid by	
Employer	11.25
Employee	10.1
Self-employed individual	16

### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Foreign-exchange controls in Barbados are administered by the Central Bank, which considers all applications. Certain transactions and routine commercial matters are delegated to the commercial banks. The Central Bank generally allows the repatriation of funds previously registered as an investment if it has been established that all local tax liabilities have been met. Certain types of entities operating in the International Business and Financial Services Sector, such as offshore banks, exempt (captive) insurance companies, international business companies and international societies with restricted liability, are effectively exempt from foreign-exchange regulations with respect to their offshore activities.

**Debt-to-Equity Rules.** There are no thin-capitalization rules in Barbados.

**Antiavoidance Legislation.** Antiavoidance provisions may be applied to transactions between related persons that are not carried out at arm's length and to artificial transactions if the primary purpose of the transaction is the reduction of taxable income.

### F. Treaty Withholding Tax Rates

The following treaty withholding tax rates apply to income received in Barbados.

	Dividends %	Interest %	Royalties %
Austria	15 (d)	0	0
Botswana	12 (a)	10	10
Canada (b)	15	15	10
CARICOM (c)	0	15	15
China	5	10	10
Cuba	15 (a)	10	5
Finland (b)	15 (d)	5	5
Malta	– (e)	5	5
Mauritius	5	5	5
Netherlands	15 (m)	0 (l)	0 (l)
Norway (b)	15 (d)	5	5
Sweden (b)	15 (d)	0 (f)	5
Switzerland	35	– (g)	0 (f)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
United Kingdom (b)	0 (l)	15	0 (h)
United States (i)	15 (d)	5	5
Venezuela	10 (j)	15 (k)	10

- (a) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 25% of the capital of the payer of the dividends.
- (b) Companies established in the International Business and Financial Services Sector are not entitled to the benefits provided under the double tax treaties with Canada, Finland, Norway, Sweden and the United Kingdom. Consequently, for these companies, the normal rates apply.
- (c) This is the Caribbean Community and Common Market (CARICOM) double tax treaty. Income is taxed only in the country of source.
- (d) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 10% of the voting shares of the payer of the dividends.
- (e) The withholding tax rate may not exceed the tax rate imposed on the income out of which the dividends are paid.
- (f) The income is exempt from withholding tax under the laws of the other treaty country.
- (g) The treaty does not contain an interest article. Consequently, the normal tax rate applies.
- (h) The rate is 15% for royalties from motion picture or television films.
- (i) Companies established under a "special tax regime" are not entitled to the benefits of the dividends, interest and royalties articles. Consequently, the domestic tax rates apply to such companies.
- (j) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 5% of the capital of the payer of the dividends.
- (k) The rate is reduced to 5% for interest paid to banks.
- (l) The treaty rate is tied to the domestic rate. Because the domestic rate is 0%, the applicable treaty rate is also 0%.
- (m) The rate is reduced to 0% if the beneficial owner of the dividend is a company that owns at least 10% of the capital of the payer of the dividends.

No tax is withheld from dividends, interest and royalties paid to nonresidents by international business companies, international banks, international societies with restricted liability and exempt (captive) insurance companies. For payments from Barbados by other companies, the following treaty withholding rates apply.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Austria	15 (c)	0	0
Botswana	12 (a)	10	10
Canada	15	15	10
CARICOM (b)	0	15	15
China	5	10	10
Cuba	15 (a)	10	5
Finland	15 (c)	5	5
Malta	15 (d)	5	5
Mauritius	5	5	5
Netherlands	15 (i)	5	5 (j)
Norway	15 (c)	5	5
Sweden	15 (c)	5	5
Switzerland	15	– (e)	0
United Kingdom	0	15	0 (f)
United States	15 (c)	5	5
Venezuela	10 (d)	15 (g)	10
Nontreaty countries	15 (h)	15	15

- (a) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 25% of the capital of the payer of the dividends.
- (b) This is the CARICOM double tax treaty.
- (c) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 10% of the voting shares of the payer of the dividends.

- (d) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 5% of the capital of the payer of the dividends.
- (e) The treaty does not contain an interest article. Consequently, the normal tax rate applies.
- (f) The rate is 15% for royalties from motion picture or television films.
- (g) The rate is reduced to 5% for interest paid to banks.
- (h) The rate is reduced to 0% if the dividends are paid out of income earned from foreign sources.
- (i) The rate is reduced to 0% if the beneficial owner of the dividends is a company that owns at least 10% of the capital of the payer of the dividends. The 0% rate applies only if a company that is resident in the Netherlands is not subject to Netherlands company tax with respect to dividends it receives from a company that is resident in Barbados.
- (j) The rate is reduced to 0% for royalties with respect to the use of, or the right to use, literary, artistic or scientific works, including royalties with respect to cinematographic films, and films, discs or tapes for radio or television broadcasting.

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### A. At a Glance

Corporate Profits Tax Rate (%)	24 (a)
Capital Gains Tax Rate (%)	24/40 (b)
Withholding Tax Rate (%) (c)	
Dividends	15
Interest	10 (d)
Royalties	15
Freight and Transportation	6
Capital Gains	15/40 (e)
Other Income	15 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	0

- (a) This is the standard profits tax rate. Certain activities are subject to special tax rates and tax incentives are available. For details, see Section B.
- (b) The 40% rate applies to capital gains derived from securities. All other capital gains are subject to tax at the standard tax rate of 24%.
- (c) Withholding tax applies to income derived from Belarus sources by foreign legal entities that do not carry out business activities in Belarus through a permanent establishment. Withholding tax rates may be reduced or eliminated under applicable double tax treaties. For a table of treaty withholding tax rates, see Section F.

- (d) This withholding tax applies to income derived from debt obligations, such as borrowings or loans, that are not formalized by securities.
- (e) A 40% withholding tax applies to capital gains derived from securities. A 15% withholding tax applies to all other capital gains. For further information, see footnote (b) above.
- (f) The Law of the Republic of Belarus on Income and Profit Taxes specifies the types of income subject to withholding tax.

## B. Taxes on Corporate Income and Gains

**Corporate Profits Tax.** Companies incorporated in Belarus are subject to corporate profits tax on their worldwide income. Non-residents carrying out business activities in Belarus through a permanent establishment are subject to the corporate profits tax only on the income derived from their activities carried out in Belarus through such permanent establishment.

Income derived from Belarus sources by nonresidents that do not carry out business activities in Belarus through a permanent establishment is subject to withholding tax. For withholding tax rates, see Section A.

Foreign companies may not carry out business activities in Belarus through a branch. In this context, a “branch” is a separate subdivision of a business entity that does not have the status or attributes of a legal entity.

**Rates of Corporate Profits Tax.** The standard corporate profits tax rate is 24%. Capital gains derived from transactions involving securities are subject to tax at a rate of 40%.

Reduced tax rates apply to certain businesses that meet specified conditions. The following are the principal reduced tax rates:

- Profits of producers of laser-based optical devices: 10%;
- Profits received within the first five years from approved investment projects in special territories: 15%; and
- Profits of producers of high-tech products: 12%.

**Tax Incentives.** Belarus offers various tax incentives, which are summarized below.

*Tax Exemptions and Reductions.* Profits of business entities with direct foreign participation exceeding 30% (except for open joint stock companies) that were established on or before 1 January 2005 are exempt from corporate profits tax for the first three years of the companies’ existence if their income is derived from the sale of their own products (work and services) and if they meet certain other conditions. However, this exemption does not apply to income derived from trade and procurement activities.

If certain conditions are met, profits subject to tax can be decreased by the following amounts:

- Profits reinvested as capital investments in industrial production (equipment) and residential construction;
- Profits used to finance the company’s own social infrastructure objects (social [nonproductive] assets that are owned by a business entity and are designed primarily to serve the entity’s employees; these include canteens, cinemas, hospitals, hostels and kindergartens); or
- Amounts used to finance state social objects (these are the same as social infrastructure objects [see preceding bullet], except that they are owned by the state), up to 5% of taxable profits.

Profits derived from certain business activities are not subject to tax, including the following:

- Manufacturing of child foodstuff products;
- Operating hotels located in approved tourist locations for the first three years of operation; and
- Growing of plants (except for flowers and decorative plants), livestock farming (except for furs), fish breeding and bee farming.

All the incentives described above can be used only if special conditions and procedures are met and, in certain circumstances, if special state permits are received.

*Free Economic Zones.* A free economic zone (FEZ) is located in each of the six regional centers of Belarus (Brest, Gomel, Grodno, Minsk, Mogilev, and Vitebsk). Residents of FEZs pay corporate profits tax at 50% of the standard rate and value-added tax (VAT; see Section D) at 50% of the standard rate of 18%, if they sell in Belarus products manufactured in a FEZ and if such products are officially listed as import substitutes. The VAT rate reduction does not apply to sales of products subject to the reduced rate of 10%.

*Special Tax Regimes.* Business entities qualifying for the simplified system of taxation are not subject to corporate profits tax, and under certain conditions, to VAT. Under this simplified system, the tax due is either 10% of gross revenues or 8% of gross revenues plus VAT, depending on certain conditions (for example, amount of turnover).

Agricultural producers qualifying for the simplified system of taxation are subject to tax at a rate of 2% of their gross revenue. Normally small companies engaged in manufacturing crop products (excluding flowers), manufacturing livestock products (excluding fur farming), fish breeding, and bee breeding qualify for the simplified system.

Gambling (except for lotteries) is subject to fixed tax rates depending on the number of items of operational equipment used (for example, gambling tables, slot machines and gambling equipment used to register betting. Lottery sales are subject to an 8% tax rate on the gross revenue less the awarded prize fund.

**Capital Gains.** Capital gains are included in taxable profits and taxed at the standard corporate profits tax rate of 24%, except for capital gains from securities which are taxed at a rate of 40%. The tax base equals the difference between the sales price received during the tax year and the acquisition price, including commissions and other fees paid for acquiring securities.

Capital gains derived by nonresidents without a permanent establishment in Belarus are subject to a 15% withholding tax, unless a double tax treaty provides otherwise. However, under the current practice of the local tax authorities (not fully supported by the current legislation), gains derived from securities derived by a nonresident from a country that has not entered into a double tax treaty with Belarus are taxed at a rate of 40%.

**Administration.** The basic tax periods are the calendar month and calendar year.



Resident companies report income and pay tax on a monthly basis. The monthly tax return must be filed by the 20th day of the month following the reporting month and corporate profits tax must be paid by the 22nd day of that month. The annual tax return must be filed by 20 January of the year following the reporting year and tax must be paid by 22 January of that year. Revised or corrected tax returns may be filed until 1 April of the year following the reporting one.

Nonresidents carrying out business activities in Belarus through a permanent establishment must file a quarterly corporate profits tax return by the 20th day following the reporting quarter. Corporate profits tax must be paid by the 22nd day of that month. The annual tax return must be filed by 15 April of the year following the reporting year and tax must be paid by 25 April of that year. The annual tax return is subject to a mandatory audit.

The fine for the late filing of a return or a late payment of tax equals 20% of the unpaid tax. The interest on a late payment is assessed at the prime rate established by the National Bank of the Republic of Belarus (currently 10.25%).

**Dividends.** Dividends paid to foreign legal entities without a permanent establishment in Belarus are subject to a 15% withholding tax, unless a double tax treaty provides otherwise. The distribution of dividends to resident companies is not subject to withholding tax. However, the amount of the dividends must be included in the taxable profits of the recipient.

**Foreign Tax Relief.** A tax credit is granted for foreign tax if the company provides documentation from the tax authorities of the foreign country that confirms the payment of the tax.

### **C. Determination of Taxable Profits**

**General.** Taxable profits are based on the financial statements prepared in accordance with the accounting standards of Belarus. Taxable profits are determined by adjusting the profits reported in the financial statements by items stipulated by the Law on Income and Profits Taxes. Adjustments relate to special income and expense items and usually act to restrict tax-deductible expenses. For example, payments for advertisement, advisory, information and audit services are deductible only within certain limits. Special rules apply for the determination of the taxable profits of banks and insurance companies.

**Inventories.** Inventories must be valued by the method used for accounting purposes. The first-in, first-out (FIFO), last-in, first-out (LIFO), or weighted average cost methods may be used for accounting purposes.

**Provisions.** Banks and financial institutions may deduct for tax purposes amounts allocated to their own reserve fund. In addition, they can establish deductible provisions for unrecoverable loans and securities, which are regulated by the National Bank of the Republic of Belarus.

**Tax Depreciation.** The amount of depreciation reported in the financial statements may be deducted for tax purposes.

**Relief for Losses.** Belarusian tax law does not provide for loss carrybacks or loss carryforwards.

**Groups of Companies.** The Belarusian tax law does not provide for tax groups. Each legal entity is a separate taxpayer.

#### D. Other Significant Taxes

Nature of Tax	Rate (%)
Value-added tax	
Standard rate	18
Sales of specified products (for example, goods for children and foods)	10
Exports of goods and services	0
Excise duties; imposed at fixed amounts per unit of goods (specific rates) or as a percentage of the value of goods (ad valorem rates); levied on various products (alcohol, tobacco products, crude oil, certain types of fuel, jewelry and cars)	Various
Special fund contributions; includes the Residential Investment Fund, the Fund for the Support of Food, Agricultural Production, and Scientific Organizations, the Road Users Fund and the Fund for Financing Housing Maintenance and Repairs; special rules apply; total rate of the contributions	3
Payroll taxes	
Social fund contributions; paid by the employer	35
Pension tax; withheld from employee	1
Land tax; annual tax imposed at fixed amount per hectare of land area	Various
Ecological tax; imposed at fixed amount per units of various contaminants	Various
Tax on immovable property; annual tax imposed on real estate, including construction-in-progress	1 to 2
Tax on cars purchased by a company; tax base is purchase price net of VAT	5
Local taxes and dues	Various
Offshore levy; imposed on payments or transfers of cash by residents to non-residents registered in tax havens; paid by residents	15

#### E. Miscellaneous Matters

**Foreign Exchange Controls.** The Belarusian ruble (BYR) has limited convertibility. The Council of Ministers of the Republic of Belarus and the National Bank of the Republic of Belarus are the currency regulation and control bodies in Belarus.

Belarus imposes detailed and severe currency control regulations. These regulations impose restrictions, controls and special reporting with respect to transactions involving the use of foreign and national currency, as well as to settlements with nonresidents.

Companies doing business in Belarus must open a bank account with a bank in Belarus.

**Debt-to-Equity Ratios.** No thin-capitalization rules currently exist in Belarus.

## F. Tax Treaties

Belarus has entered into double tax treaties with the following countries: Armenia; Austria; Azerbaijan; Belgium; Bulgaria; China; Croatia; Cyprus; the Czech Republic; Egypt; Estonia; Hungary; India; Iran; Israel; Kazakhstan; Korea (South); Kyrgyzstan; Kuwait; Latvia; Lebanon; Lithuania; Moldova; the Netherlands; Poland; Romania; the Russian Federation; the Slovak Republic; South Africa; Sweden; Switzerland; Syria; Tajikistan; Turkey; Turkmenistan; Ukraine; United Arab Emirates; Uzbekistan; Vietnam; and Yugoslavia.

Belarus has also signed double tax treaties with Bahrain and Mongolia, but these treaties have not yet been ratified.

Belarus honors several of the double tax treaties entered into by the former USSR, including treaties with the following countries: Canada; Denmark; France; Germany; Italy; Japan; Malaysia; Norway; Spain; the United Kingdom; and the United States.

The following table presents the withholding tax rates under Belarus' tax treaties and under the former USSR's treaties honored by Belarus.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Armenia	10/15 (a)	0/10 (v)	10
Austria	5/15 (e)	0/5 (u)	5
Azerbaijan	15	0/10 (v)	10
Belgium	5/15 (e)	0/10 (z)	5
Bulgaria	10	0/10 (v)	10
Canada (q)	15	0/10 (v)	0/10 (y)
China	10	0/10 (v)	15
Croatia	5/15 (e)	10	10
Cyprus	5/10/15 (d)	5	5
Czech Republic	10	0/5 (v)	10
Denmark (q)	15	0	0
Egypt	15	10	15
Estonia	10	0/10 (v)	10
France (q)	15	0/10 (r)	0
Germany (q)	15	0/5 (v)	0
Hungary	5/15 (e)	5	5
India	10/15 (g)	0/10 (v)	15
Iran	10/15 (g)	0/5 (v)	5
Israel	15 (t)	10 (t)	15 (t)
Italy (q)	15	0	0
Japan (q)	15	10	0/10 (n)
Kazakhstan	15	0/10 (v)	15
Korea (South)	5/15 (e)	0/10 (p)	5
Kyrgyzstan	15	0/10 (v)	15
Kuwait	0/5 (x)	0/5 (v)	10
Latvia	10	0/10 (v)	10
Lebanon	7.5	0/5 (v)	5
Lithuania	10	10	10
Malaysia (q)	15	0/10 (v)	10/15 (o)
Moldova	15	10	15

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Netherlands	0/5/15 (e)(w)	0/5 (u)	3/5/10 (f)
Norway (q)	15	10 (t)	0
Poland	10/15 (a)	0/10 (bb)	0
Romania	10	0/10 (v)	15
Russian Federation	15	0/10 (v)	10
Slovak Republic	10/15 (g)	0/10 (v)	5/10 (i)
South Africa	5/15 (e)	0/5/10 (l)	5/10 (m)
Spain (q)	15	0	0/5 (y)
Sweden	5/10 (b)	5	3/5/10 (c)
Switzerland	5/15 (e)	0/5/8 (aa)	3/5/10 (c)
Syria	15	10	15
Tajikistan	15	0/10 (bb)	15
Turkey	10/15 (g)	0/10 (h)(v)	10
Turkmenistan	15	0/10 (v)	15
Ukraine	15	10	15
United Arab Emirates	5/10 (j)	0/5 (s)	5/10 (k)
United Kingdom (q)	0	0	0
United States (q)	15 (t)	0	0
Uzbekistan	15	0/10 (v)	15
Yugoslavia	5/15 (e)	8	10
Vietnam	15	0/10 (v)	15
Nontreaty countries	15	10	15

- (a) The 10% rate applies if the recipient owns more than 30% of the capital of the payer company. The 15% rate applies in all other cases.
- (b) The 5% rate applies if the recipient owns more than 30% of the capital of the payer company. The 10% rate applies in all other cases.
- (c) A 3% rate applies to amounts paid for the use of, or the right to use, patents, and secret formulas or processes, or for information concerning industrial, commercial, or scientific experience. The 5% rate applies to amounts paid for use of, or the right to use, industrial, commercial, or scientific equipment. The 10% rate applies in all other cases.
- (d) The 5% rate applies if the recipient has invested at least ECU 200,000 in the share capital of the payer. The 10% rate applies if the recipient owns more than 25% of the capital of the payer company. The 15% rate applies in all other cases.
- (e) The 5% rate applies if the recipient owns more than 25% of the capital of the payer company. The 15% rate applies in all other cases.
- (f) The 3% rate applies to amounts paid for the use of, or the right to use, patents, brand names, designs, models, plans, and secret formulas or processes, or for information related to industrial, commercial, or scientific expertise. The 5% rate applies to payments for the use of, or the right to use, industrial, commercial, or scientific equipment (including vehicles). The 10% rate applies to amounts paid for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including motion pictures and films or tapes used for television and radio broadcasting.
- (g) The 10% rate applies if the recipient owns more than 25% of the capital of the payer company. The 15% rate applies in all other cases.
- (h) The 0% rate applies to the following interest payments: interest arising in Belarus and paid to the Eximbank of Turkey for loans used to purchase industrial, commercial, trading, medical, or scientific equipment; and interest paid to the government or central bank. The 10% rate applies in all other cases.
- (i) The 5% rate applies to amounts paid for copyrights of works of literature, art, or science, including motion pictures, films, tapes and other means of transmitting images or sounds. The 10% rate applies to amounts paid for the following: patents, trademarks, designs, drafts, models, schemes, and secret formulas or processes; information concerning industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, or scientific equipment; or means of transportation.
- (j) The 5% rate applies if the actual owner of the dividends is a company that owns US\$100,000 or more in the company paying the dividends. The 10% rate applies in all other cases.

- (k) The 5% rate applies to amounts paid for the following: the use of, or the right to use, copyrights of scientific works, patents, brand names, designs, models, plans, and secret formulas or processes; the right to use information related to industrial, commercial, or scientific equipment or vehicles; or information related to industrial, commercial or scientific expertise. The 10% rate applies to amounts paid for the use of, or the right to use, copyrights of literary or artistic works, including motion pictures or films and tapes used for television or radio broadcasting.
- (l) The 0% rate applies if the recipient of the interest income is the government or a government authority. The 5% rate applies if the recipient of the interest income is a bank or other financial institution. The 10% rate applies in all other cases.
- (m) The 5% rate applies to amounts paid for industrial, commercial, or scientific equipment, or vehicles. The 10% rate applies in all other cases.
- (n) The 0% rate applies to amounts paid for the use of, or the right to use, copyrights of works of literature, art, or science, including motion pictures, films, or tapes for television or radio broadcasting. The 10% rate applies to amounts paid for the following: the use of, or the right to use, patents, trademarks, designs, drafts, models, schemes, and secret formulas or processes; information concerning industrial, commercial, or scientific experience; or the use of, or the right to use, industrial, commercial, or scientific equipment.
- (o) The 10% rate applies to amounts paid for the following: the use of, or the right to use, patents, brand names, designs, models, plans, secret formulas or processes, or copyrights of scientific works; the use of, or the right to use, industrial, commercial or scientific equipment; or the use of, or the right to use, information related to industrial, commercial, or scientific expertise. The 15% rate applies to amounts paid for the use of, or the right to use, copyrights of motion pictures or magnetic tapes for television and radio broadcasting, or of literary and artistic works.
- (p) The 0% rate applies if the interest income is derived from sales on credit of industrial, medical, or scientific equipment or if the recipient of the interest income is the government or central bank.
- (q) Belarus honors the double tax treaty entered into by the former USSR and this country. The table lists the tax rates under such treaty.
- (r) The 0% rate applies to interest on bank and commercial loans. The 10% rate applies in all other cases.
- (s) The 0% rate applies to interest on loans guaranteed by the government. The 5% rate applies in all other cases.
- (t) The treaty does not provide for a reduced rate. Consequently, the rate under the Belarus domestic tax law applies.
- (u) The 0% rate applies if the loan is approved by the government or if the recipient of the interest income is the government or central bank.
- (v) The 0% rate applies if the recipient of the interest income is the government or central bank.
- (w) The 0% rate applies if either of the following conditions is satisfied:
- The recipient owns more than 50% of the capital of the payer company and its capital contribution is at least ECU 250,000; or
  - The recipient owns more than 25% of the capital of the payer company and the capital contribution is guaranteed or insured by the government.
- (x) The 0% rate applies if the recipient of the dividends is the government or central bank. The 5% rate applies in all other cases.
- (y) The 0% rate applies to amounts paid for use of, or the right to use, copyrights of works of literature, music, art, or science, other than motion pictures or films and tapes for television or radio broadcasting.
- (z) The 0% rate applies if any of the following conditions is satisfied:
- The loan is approved by the government;
  - The interest income is derived from sales on credit of industrial, medical, or scientific equipment or services supply contracts; or
  - The loan relates to industrial, medical, or scientific equipment or services supply contracts, it is guaranteed by the government, and it is aimed at supporting exports.
- The 10% rate applies in all other cases.
- (aa) The 0% rate applies if any of the following conditions are satisfied:
- The loan is approved by the government;
  - The interest income is derived from sales on credit of industrial, medical, or scientific equipment; or
  - The interest income is derived from government securities.
- The 5% rate applies to interest on loans granted by banks. The 8% rate applies in all other cases.
- (bb) The 0% rate applies if the loan is approved by the government. The 10% rate applies in all other cases.

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**A. At a Glance**

Corporate Income Tax Rate (%)	33 (a)(b)
Capital Gains Tax Rate (%)	33 (b)(c)
Branch Tax Rate (%)	33 (b)

Withholding Tax (%)	
Dividends	25 (d)
Interest	15
Royalties from Patents, Know-how, etc.	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

(a) See Section B.

(b) In addition, a 3% surtax (crisis contribution) is imposed. The surtax is a temporary measure for which the expiration date has not yet been announced.

(c) Certain capital gains are exempt from tax (see Section B).

(d) The rate of withholding tax is reduced to 15% for certain dividends. Liquidation bonuses are taxed at a rate of 10%. For further details, see Section B.

(e) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income; nonresident companies pay tax only on Belgian-source income. A company is resident in Belgium if its central management or registered address is there.

**Rates of Corporate Income Tax.** The general corporate income tax rate is 33%. Income below €322,500 is taxed at rates ranging from 24.25% to 34.5%. The reduced rates apply only if the company pays an annual fee of at least €36,000 (effective from the 2008 tax year; the 2008 tax year relates to all accounting years ending from 31 December 2007 until 30 December 2008; the prior threshold was €30,000) to at least one director or partner and if the company does not use the services of an approved Belgian coordination center. They do not apply if the company is a holding company or is 50% or more owned by another company. In such cases, the 33% rate applies at all levels. The 33% rate also applies at all levels if dividends exceed 13% of paid-in capital. Branches are subject to tax at a rate of 33%.

In addition to the above rates, a 3% surtax (crisis contribution) is imposed. The surtax is a temporary measure for which the expiration date has not yet been announced.

Tax holidays are available in certain circumstances.

**Special Corporate Tax Regimes.** Special favorable corporate tax regimes were available for coordination centers, service centers and distribution centers if these entities met certain conditions. Coordination centers that were approved as of 17 February 2003 can renew their recognition but not beyond 31 December 2010. Effective from 2003, a new system for advance pricing agreements was introduced. A ruling may be requested regarding the tax base of service centers and distribution centers.

**Notional Interest Deduction.** Belgian companies and foreign companies with a Belgian permanent establishment or real estate are granted a tax deduction equal to a percentage of the “risk capital.” This deduction is not reflected in the financial accounts. The “risk capital” equals the total equity, including retained earnings and accumulated reserves, stated in the nonconsolidated opening balance sheet of the tax year (upward or downward adjustments of the risk capital are taken into account on a pro rata basis), excluding the following items:



- The net tax-value of the company's own shares and shares held in other companies that are accounted for as fixed financial assets;
- The net book-value of assets allocable to foreign permanent establishments and foreign immovable property and property rights, the income of which is exempt from tax in Belgium based on double tax treaties;
- Capital grants (subsidies); and
- The tax credit for research and development (R&D).

The tax deduction is computed by multiplying the risk capital by the average interest rate applicable for a risk-free, long-term Belgian government bond (the 10-year Obligations linéaires – lineaire obligatie, or OLO) of the preceding year. The rate for the 2008 tax year is 3.781%. For the 2009 tax year, the average of 2007, which was 4.307%, will be taken into account. The rate cannot vary more than one percentage point from one year to the next and is generally limited to 6.5%. Small and medium-sized enterprises are entitled to an interest deduction that is a half percentage point higher (4.281% for the 2008 tax year).

In the event of a loss situation, the deduction may be carried forward for up to seven years.

The deduction is not conditioned on an investment in tangible or intangible assets or on an effective dividend distribution. It is not recharacterized as a “deemed” dividend or interest payment. Approved coordination centers may not benefit from the notional interest deduction.

**Tax Incentive for Audiovisual Investments.** A tax incentive is available to support the production of Belgian audiovisual works. To qualify for the incentive, several conditions must be satisfied. These conditions relate to the production company, the investors and the nature of the investments, as well as to the audiovisual work itself. The following are the conditions:

- The Belgian audiovisual work must be produced by a Belgian resident production company.
- The investor must be either a resident Belgian company or a Belgian branch of a foreign company. However, the investor may not be a Belgian production company or a television broadcasting company.
- To qualify for the incentive, the investments must be loans granted to the production company or rights linked to the production and exploitation of the audiovisual work. Other expenditures may not be taken into consideration. Consequently, sponsorship and advertising expenses are excluded, but they remain tax-deductible under the ordinary tax rules.
- The total of the qualifying sums invested in the production of an audiovisual work may not exceed 50% of the total estimated amount of the expenses for the production of the audiovisual work. In addition, the total of the investments in loans may not exceed 40% of the total qualified investments (loans and rights).

The investors are entitled to a tax exemption of 150% of the invested funds. However, for each accounting period, the exemption is limited to 50% of the taxable reserved profit (profit retained by the company) or €750,000, whichever is greater. If the investor does not have sufficient profit, the tax exemption may be carried forward indefinitely.

The tax exemption becomes final after the competent authorities have certified that the conditions were met. This certification must be established within a maximum period of approximately four years following the investment.

**Capital Gains.** Capital gains on shares are exempt from tax if dividends on the shares qualify for the participation exemption (see *Dividends* below). To qualify for the participation exemption for capital gains, only the taxation test needs to be satisfied. Neither a minimum holding period nor a minimum share ownership is required.

All other capital gains are taxed at the ordinary rate. If the proceeds are used for buying depreciable fixed assets within three years (or a longer period in certain circumstances) and if certain other conditions are satisfied, the taxation of the capital gains is deferred over the period of depreciation of the newly acquired assets.

**Administration.** To avoid a surcharge, tax should be paid in advance in quarterly installments. For a calendar-year taxpayer, the quarterly installments are due in 2008 on 10 April, 10 July, 10 October and 22 December. A substantial surcharge is imposed on insufficient prepayments. For the 2007 income year, the surcharge is 9%.

The balance of tax payable is due within two months of receipt of the notice of assessment.

*Advance Rulings.* On 1 January 2003, a new general ruling system was introduced.

Under the previous system, advance rulings could be obtained for specific matters only. The new ruling system covers all matters under the jurisdiction of the tax authorities (Federal Finance Department). The philosophy behind the new approach is to increase upfront certainty for investors and to reduce controversies between taxpayers and tax authorities regarding the tax consequences of transactions.

The tax authorities must respond to a ruling request within a three-month period, which may be extended by mutual agreement. A ruling may be valid for a period of up to five years.

Advance rulings are not issued regarding the following:

- Operations that have already been implemented or that are in a tax litigation phase;
- Operations for which it is not appropriate to issue advance rulings, taking into account the legislative provisions (for example, tax avoidance; a royal decree is expected to elaborate on the scope of this exclusion);
- Questions regarding the collection of taxes;
- Operations that lack economic substance in Belgium; and
- Transactions, essential parts of which involve tax havens that do not cooperate with the Organization for Economic Cooperation and Development (OECD).

Ruling requests filed with the Belgian tax authorities that relate to multinational investments and transactions must disclose other ruling requests filed in European Union (EU) or treaty countries regarding the same matters and their outcomes.

The advance rulings issued under the new ruling procedure are published anonymously.

**Dividends.** Under the intercorporate dividend exclusion of the participation exemption, 95% of the dividends received by a qualifying Belgian company or Belgian branch is exempt from tax. The participation exemption applies only if a minimum participation test and a taxation test are satisfied. To satisfy the minimum participation test, the following requirements must be met:

- The recipient company must own a minimum participation of 10% or €1.2 million; and
- The beneficiary of the dividends must have owned the shares for at least one year and accounted for these shares as financial assets.

The minimum participation thresholds and the one-year holding period requirement are not applicable to dividends received by qualifying investment companies. Financial institutions and insurance companies receiving dividends need to meet only the one-year holding period requirement to satisfy the minimum participation test.

Under the taxation test, the participation exemption does not apply to dividends paid by a subsidiary based in a country where the tax regime is “significantly more favorable” than the Belgian corporate tax regime. A foreign tax system is considered “significantly more favorable” if either of the following applies:

- The nominal tax rate applicable to company profits is less than 15%; or
- The actual tax burden resulting from the manner in which taxable profits are determined is less than 15%.

A blacklist, which specifies the countries matching the above description, has been published.

The tax regime for companies in other EU member states is not deemed to be “significantly more favorable” than the Belgian regime.

For dividends received from participations in companies deriving their income from foreign permanent establishments (PEs), the tax regime is not considered significantly more favorable than the Belgian regime if the profits derived by the foreign subsidiary through its foreign establishment are subject to an effective global tax rate (that is, both at the level of the branch and at the level of the head office) of at least 15%, or if both the company and its foreign establishment are located within the EU.

The normal statutory withholding tax rate for dividends paid by Belgian companies is 25%. Under most of Belgium’s tax treaties, this rate is reduced. The rate of statutory withholding tax is reduced to 15% for dividends on certain shares issued on or after 1 January 1994, certain qualifying shares issued in 1982 or 1983 and shares of investment companies (SICAVs, SICAFs and OPCCs). For shares issued on or after 1 January 1994, the 15% rate applies if the shares are issued to the public, are registered or are deposited in registered form with a financial institution controlled by the Belgian Banking Commission.

A 10% withholding tax is imposed on proceeds that are paid out as of the date of the complete or partial liquidation of a company

or that are paid when a company redeems its own shares. The exemption from withholding tax under the European Union (EU) Parent-Subsidiary Directive for a participation of 15% that is held for one year also applies to this withholding tax (see footnote [f] in Section F).

**Foreign Tax Relief.** Income earned abroad may be totally exempt under the provisions of a tax treaty because business profits derived from a permanent establishment situated in a country having a tax treaty with Belgium, and included in the financial statements of the Belgian corporation, are not included in the corporation's taxable income. If no tax treaty applies, foreign tax relief is not available.

### C. Determination of Trading Income

**General.** Taxable income is based on income reported in the annual financial statements and includes all profits and losses, speculative and nonspeculative gains and losses, dividends, interest, royalties and rent.

Nondeductible business expenses include, among other items, excessive interest charges, corporate tax, social benefits (such as luncheon vouchers, sports clubs and corporate membership cards), 25% of automobile expenses (other than fuel and financing expenses), 69% of restaurant expenses and 50% of entertainment expenses.

**Inventories.** Stock values may not exceed the lower of cost or market value; cost is defined as the purchase price of raw materials plus direct and indirect production costs. The inclusion of indirect production costs, however, is optional. Accepted valuation methods are first-in, first-out (FIFO), last-in, first-out (LIFO) and weighted-average; valuation of stocks at replacement cost is not permitted.

**Provisions.** Provisions are tax deductible only if they are accounted for and if they relate to specific final losses that were incurred during the applicable financial year. Special tax provisions apply to vacation pay.

**Depreciation.** In principle, depreciation rates are determined based on the anticipated useful economic life of the assets. The following straight-line rates are generally accepted.

Asset	Rate (%)
Office buildings	3
Industrial buildings	5
Chemical plants	8 to 12.5
Machinery and equipment	10 to 20
Office furniture and equipment	10 to 15
Rolling stock (motor vehicles)	20 to 33
Small tools	33 to 100

The declining-balance method and accelerated depreciation are also allowed under certain circumstances. For assets acquired or produced on or after 1 January 1992 with an amortization period of less than five years, the annual depreciation rate under the declining-balance method may not exceed 40% of the acquisition value.

Audiovisual investments must be amortized using the straight-line or declining-balance method, with no minimum amortization period. Research and development (R&D) investments must be amortized for tax purposes using the straight-line method over a period of at least three years. All other intangible assets must be amortized for tax purposes using the straight-line method over a period of at least five years.

A 13.5% deduction is available for investments during the year in R&D, energy savings and related patents by resident and nonresident companies. A company can opt for a staggered investment deduction of 20.5% and consequently deduct 20.5% of the annual amortization each year. For security-related investments, a 20.5% investment deduction is available.

If the company has insufficient taxable income, the investment deduction may be carried forward.

For investments in R&D, a company can irrevocably opt for a tax credit instead of a deduction at the same rate as the deduction. In contrast to the investment deduction, this tax credit is effectively paid out if a company has insufficient taxable income for four consecutive tax years.

Tax shelters exist for investment in Belgian audiovisual works (see Section B). Special tax incentives are also available for the shipping industry.

**Patent Box.** Effective from the 2008 tax year, resident and non-resident companies can benefit from an incentive called the “patent income deduction.” This incentive provides a tax deduction equal to 80% of income derived from certain new patents. The deduction applies to the following three types of patents:

- Self-developed patents by Belgian companies (or branches), developed in R&D centers in Belgium or abroad;
- Patents acquired by Belgian companies (or branches) from related or unrelated parties, provided that they are being further developed in R&D centers in Belgium or abroad, regardless of whether such development results in additional patents; and
- Patents licensed from related or unrelated parties by Belgian companies (or branches), provided that they are being further developed in R&D centers in Belgium or abroad, regardless of whether such development results in additional patents.

The tax deduction is available for income derived from the licensing of the patents to related or unrelated parties and for income derived from the use of these patents in the production process of patented products, either by a Belgian company or branch or on its behalf.

For patents that are licensed to related or unrelated parties by Belgian companies or branches, the deduction equals 80% of the patent income received, to the extent that the income is at arm’s length, resulting in an effective tax rate of 6.8%. This rate can be further reduced by taking into account other deductions, such as the notional interest deduction (see Section B).

For patents that are used in the production process by or on behalf of Belgian companies or branches, a deemed deduction may be claimed with respect to the taxable profits of the Belgian company or branch, equal to 80% of the arm’s length royalty that

would have been received by the Belgian company or branch if it had licensed the patents used in the production process to unrelated third parties.

For patents licensed or acquired from third parties, the base on which the 80% exemption is calculated must be reduced by the following:

- Compensation paid to obtain the ownership of licensee rights in such patents, to the extent that they were deducted from the Belgian tax base; and
- Amortization claimed with respect the acquired value of the patents, to the extent that they were deducted from the Belgian tax base.

The patent income deduction may be claimed in addition to the normal tax deductions of all R&D-related and other business expenses, such as R&D infrastructure costs, salary costs, R&D personnel costs and patent registration duties.

Any excess deduction for patent income may not be carried forward to future years.

The patent tax deduction is effective from the 2008 tax year. However, the deduction is available only if it relates to income derived from patents that have not been used for the sale of goods or for services to third parties by Belgian companies or branches, licensees or related parties before 1 January 2007.

**Relief for Losses.** Companies may carry forward tax losses indefinitely.

The deduction of carryover losses is restricted in the case of a tax-free merger of a profitable company and a company with carryover losses. Losses may not be carried forward if control of a company changes unless the change of control can be justified by legitimate financial or economic reasons.

Tax losses may not be carried back.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, standard rate	21
Social security contributions, on gross salary	
Employer (approximately)	35
Employee	13.07
Real estate tax; rate depends on location (allowed as a deductible expense for corporate income tax purposes)	Various
Environmental tax; rate depends on the location and the activity or product; tax is not deductible for corporate income tax purposes	Various
Registration duties, on contributions to companies	0

#### **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** Payments and transfers do not require prior authorization. However, for statistical purposes, financial

institutions are required to report all transactions with foreign countries to the National Bank of Belgium. Resident individual enterprises are also subject to this reporting obligation if they conclude the transactions through nonresident institutions or directly.

**Transfer Pricing.** The Belgian Income Tax Code (ITC) contains three antiavoidance provisions that relate to specific aspects of transfer pricing. Under the most significant of these provisions, all “abnormal and gratuitous advantages” granted by a Belgian enterprise are added to the taxable income of the Belgian enterprise. However, this rule does not apply if the advantages are directly or indirectly part of the taxable income of the recipient. This exception is not available for transfers to foreign corporations enjoying a favorable tax status in their country of residence. In general, the tax authorities have the burden of proof with respect to this antiavoidance rule. The ITC also contains antiavoidance provisions concerning royalties, interest on loans and other items, as well as a provision on the transfer of certain types of assets abroad. Under these provisions, the taxpayer must demonstrate the bona fide nature of the transaction.

Similar antiavoidance provisions are included in Belgium’s tax treaties, which are based on the Organization for Economic Cooperation and Development (OECD) model convention.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law on outbound dividends. Effective from 1 January 2007, Belgium introduced an exemption from dividend withholding tax for companies located in countries with which Belgium has entered into a tax treaty. The exemption is subject to the same conditions as those contained in the EU Parent-Subsidiary Directive (see footnote [f]). However, the treaty must contain an exchange-of-information clause. As a result certain countries are excluded (see footnote [s]).

	<b>Dividends (a)(s)</b> %	<b>Interest (b)</b> %	<b>Royalties (c)</b> %
Albania	15 (m)	5	5
Algeria	15	15 (i)	15 (i)(j)
Argentina	15 (m)	12	15 (h)(i)(k)
Armenia	15	10 (i)	8
Australia	15	10	10
Austria	15 (f)	15	0 (g)
Azerbaijan	15 (m)	10	10 (e)(g)
Bangladesh	15	15	10
Belarus	15 (m)	10	5
Brazil	15 (m)	15 (k)	15 (i)
Bulgaria	10	10	5
Canada	15	10	10 (j)
China	10	10	10 (i)
Côte d’Ivoire	15	15	10
Croatia	15 (m)	10	0
Cyprus	15 (f)(m)	10	0
Czech Republic	15 (f)(m)	10 (i)	10 (n)
Denmark	15 (f)(m)	10	0
Ecuador	15	10 (i)	10 (i)
Egypt	20 (m)	15	15 (i)

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties (c)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Estonia	15 (m)	10 (i)	10 (o)
Finland	15 (f)(m)	10	5 (h)
France (l)	15 (f)(m)	15	0
Gabon	15	15 (i)	5
Georgia	15 (m)	10 (i)	10 (i)
Germany	15 (f)	15 (p)	0
Greece	15 (f)(m)	10	5
Hong Kong	15 (m)	10 (i)	5
Hungary	10 (f)	15	0
Iceland	15 (m)	10 (i)	0
India	15	15 (i)	0
Indonesia	15 (m)	15 (k)	10
Ireland	15 (f)	15	0
Israel	15	15	10 (e)
Italy	15 (f)	15	5
Japan	15 (m)	10	10
Kazakhstan	15 (m)	10	10
Korea	15	10	10
Kuwait	10	0	10
Latvia	15 (f)(m)	10 (i)	10 (o)
Lithuania	15 (f)(m)	10 (i)	10 (o)
Luxembourg	15 (f)(m)	15 (p)	0
Malaysia	15	15 (k)	10 (h)
Malta	15 (f)	10	10 (h)
Mauritius	10 (m)	10	0
Mexico	15 (m)	15 (k)	10
Mongolia	15 (m)	10	5 (i)
Morocco	15	15	10 (j)
Netherlands	15 (f)(m)	10 (i)	0
New Zealand	15	10	10
Nigeria	15 (m)	12.5	12.5
Norway	15 (m)	15	0
Pakistan	15 (m)	15	15 (j)
Philippines	15 (m)	10	15
Poland	10 (f)(m)	5 (i)	5
Portugal	15 (f)	15	10
Romania	10 (m)	15	5
Russian Federation	10	10 (i)	0
San Marino	15 (m)	10 (i)	5
Senegal	15	15	10
Singapore	15	10	5
Slovak Republic	15 (f)(m)	10	5
Slovenia	15 (f)(m)	10 (i)	5
South Africa	15 (m)	10	0
Spain	15 (f)(m)	10 (i)	5
Sri Lanka	15	10	10
Sweden	15 (f)	10	0
Switzerland	15 (m)(r)	10	0
Taiwan	10	10	10
Thailand	20 (m)	25 (k)	15 (j)
Tunisia	15	15	15 (h)
Turkey	20 (m)	15	10
Ukraine	15 (m)	10	10 (i)
USSR (o)	15	15	0



	<b>Dividends (a)</b> %	<b>Interest (b)</b> %	<b>Royalties (c)</b> %
United Arab Emirates	10 (m)	5	5
United Kingdom	10 (f)(m)	15	0
United States (t)	15 (m)	0 (i)	0
Uzbekistan	15 (m)	10 (i)	5
Venezuela	15 (m)	10	5
Vietnam	15 (m)	10	15 (i)
Yugoslavia (d)	15 (m)	15	10
Nontreaty countries	10/15/25 (q)	15	15

- (a) The rate is reduced to 15% for certain dividends (see Section B).
- (b) For securities issued or loans contracted on or after 1 March 1990, the withholding tax rate under Belgian domestic tax law is 15%. Interest paid on securities issued or loans contracted before that date is subject to withholding tax under Belgian domestic tax law at a rate of 25%. Please consult the relevant treaty for details concerning a possible exemption (Ukraine: exemption or 2% rate). Various exemptions under Belgian domestic tax law are not reflected in the table. Belgium also applies the EU Directive on Royalties and Interest between related companies (Council Directive 2003/49/EC). Under this directive, interest payments between companies located in the EU are exempt from withholding tax if one of the companies has a direct or indirect participation of 25% or more in the other company. The list of companies covered by this directive is more limited than the list contained in the EU Parent-Subsidiary Directive.
- (c) For contracts entered into on or after 1 March 1990, the withholding tax rate under Belgian domestic tax law is 15%. Royalties paid on contracts entered into before that date are subject to a withholding tax of 25% under Belgian domestic tax law. Belgium also applies the Directive on Royalties and Interest (Council Directive 2003/49/EC). Under this directive, royalties paid between companies located in the EU are exempt from withholding tax if one of the companies has a direct or indirect participation of 25% or more in the other company. The list of companies covered by this directive is more limited than the list contained in the EU Parent-Subsidiary Directive.
- (d) Belgium is honoring the Yugoslavia treaty with respect to the new republics comprising the former Yugoslavia.
- (e) A lower rate applies to royalties for the use of works of art, science or literature, other than motion pictures. The lower rate is 5% under the Algeria and Azerbaijan treaties and 0% under the Israel treaty.
- (f) Under the EU Parent-Subsidiary Directive, which has been incorporated in Belgian domestic law, no withholding tax is imposed on dividends paid by a Belgian subsidiary to a parent company in another EU state if the recipient owns at least 15% of the capital of the payer for at least one year.
- (g) A 10% rate applies if the recipient owns more than 50% of the capital of the Belgian company.
- (h) A 0% rate (Argentina and Tunisia, 5%) applies to copyright royalties.
- (i) Please consult the treaty for further details.
- (j) A 0% rate (Algeria, Morocco and Thailand, 5%) applies to copyright royalties other than for motion pictures.
- (k) Please consult the treaty for details concerning the possible application of a 10% rate.
- (l) Belgium has signed a new tax treaty with France, but the treaty has not yet been ratified. The rates listed in the table are those under the existing treaty.
- (m) The following lower rates apply to dividends paid by Belgian subsidiaries if the recipient holds the indicated level of participation.

	<b>Lower Rate</b> %	<b>Level of Participation</b>
Albania	5	25%
Argentina	10	25%
Armenia	5	10%
Azerbaijan	5	30% and US\$500,000 (1)
Azerbaijan	5	US\$10,000,000 (1)
Azerbaijan	5	10% and US\$75,000 (1)
Belarus	5	25%
Brazil	10	10%
Canada	5	10%

	Lower Rate %	Level of Participation
Croatia	5	10%
Cyprus	10	25%
Czech Republic	5	25%
Denmark	0	25%
Egypt	15	25%
Estonia	5	25%
Finland	10	10%
France	10	10%
Georgia	5	25%
Greece	5	25%
Hong Kong	5	10%
Hong Kong	0	25%
Iceland	5	10% (2)
Indonesia	10	25%
Japan	5	25%
Kazakhstan	5	10%
Latvia	5	25%
Lithuania	5	25%
Luxembourg	10	€6,197,338.12
Mauritius	5	10%
Mexico	5	25%
Mongolia	5	10%
Netherlands	5	10%
Nigeria	12.5	10%
Norway	5	25%
Pakistan	10	20% (3)
Philippines	10	10%
Poland	5	25% (4)
Poland	5	10% and €500,000 (4)
Romania	5	25%
San Marino	5	10%
San Marino	0	25%
Slovak Republic	5	25%
Slovenia	5	25%
South Africa	5	25%
Spain	0	25%
Switzerland	10	25%
Thailand	15	25%
Turkey	15	10%
Ukraine	5	20%
United Arab Emirates	5	25%
United Kingdom	5	25%
United States	0	10% of capital (5)
United States	5	10% of voting shares (5)
Uzbekistan	5	10%
Venezuela	5	25%
Vietnam	5	50%
Vietnam	10	25% but less than 50%
Yugoslavia	10	25%

- (1) Dividends may qualify for the 5% rate if the recipient holds any of the three listed levels of participation.
- (2) The 5% rate does not apply to dividends distributed by an Icelandic company if such dividends are deductible from the tax base in Iceland or if they can be carried forward as an operating loss of the company in Iceland.
- (3) The 10% rate applies only if the recipient is an industrial undertaking.
- (4) Dividends may qualify for the 5% rate if the recipient holds either of the listed levels of participation.
- (5) The 0% rate applies if the beneficial owner of the dividends is a company that has owned directly shares representing at least 10% of the capital of the payer of the dividends for a 12-month period ending on the date on which the dividend is declared. The 5% rate applies if the beneficial owner is a company that owns directly at least 10% of the voting shares of the payer the dividends.
- (n) A 5% rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (o) Belgium is honoring the USSR treaty with respect to the republics comprising the Commonwealth of Independent States (CIS). Belgium has entered into a tax treaty with the Russian Federation.
- (p) A 0% rate applies to interest paid by a company to another company if the recipient has a direct or indirect participation in the payer of less than 25%.

- (q) See Section B.
- (r) The EU and Switzerland entered into an agreement that contained, among other items, a measure providing that the EU Parent-Subsidiary Directive also applies to relations between EU member states and Switzerland. Consequently, a withholding tax exemption may be claimed for dividends paid by a Belgian company to a Swiss company if, at the time of payment of the dividends, the recipient of the dividends has held a 25% participation in the payer for at least two years and if certain other conditions are satisfied.
- (s) Belgium has extended the application of the EU Parent-Subsidiary Directive to all companies located in a country with which Belgium has entered into a tax treaty. In addition to the conditions that must be met under the directive (15% participation for at least one year and qualifying company), the treaty must contain an extended exchange-of-information clause. Only Belgium's treaties with Kuwait, Switzerland (see footnote [r]) and the former USSR (applicable to Kyrgyzstan, Moldova, Tajikistan and Turkmenistan) do not have such a clause.
- (t) These are the withholding tax rates under a new tax treaty with the United States. The rates are effective from 1 January 2008.

Belgium is negotiating or renegotiating tax treaties with Ghana, Italy, Macau, Morocco and Tunisia, but these treaties have not yet become effective.

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### **A. At a Glance**

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	0

### **B. Taxes on Corporate Income and Gains**

Bermuda does not impose income taxes or withholding taxes.

### C. Fees and Payroll Taxes

**Annual Fee.** An annual government fee, based on capital, is imposed on companies. The following is a schedule of the fees for exempted companies (see Section D).

Capital of Company		Annual Fee \$
Exceeding \$	Not Exceeding \$	
0	12,000	1,870
12,000	120,000	3,820
120,000	1,200,000	5,890
1,200,000	12,000,000	7,850
12,000,000	100,000,000	9,815
100,000,000	500,000,000	17,530
500,000,000	—	29,220

Certain types of entities are not subject to the annual fee described above. These entities are required to pay the following annual fees.

Entity	Annual Fee (\$)
Permit company whose principal business is Finance, insurance or operation of an open-end mutual fund	3,870
Any other business	1,870
Exempt company parent of a wholly owned exempted company carrying on insurance business	1,870
Unit trust management company	2,725

**Payroll Taxes.** Payroll tax is imposed on the total value of cash and benefits paid to employees for services rendered in a tax period. Graduated rates are imposed according to, in general, the annual payroll level of the taxpayer. Employers may withhold up to 4.75% of employee remuneration to pay the payroll tax.

The following are the rates of the payroll tax:

- 13.5%: applicable to taxpayers with an annual payroll of greater than \$1,000,000 and exempt undertakings;
- 12.75%: applicable to taxpayers with an annual payroll of greater than \$500,000 and up to \$1,000,000;
- 10.75%: applicable to taxpayers with an annual payroll of at least \$200,000 and up to \$500,000;
- 9.75%: applicable to taxpayers operating a hotel or restaurant with an annual payroll of \$200,000 or greater;
- 7.75%: applicable to remuneration paid to employees in special situations;
- 7.25%: applicable generally to employers and self-employed persons with an annual payroll of less than \$100,000; and
- 4.75%: applicable to the government and various government agencies, registered charities, and religious and cultural organizations.

Items exempted from the payroll tax base include employers' contributions to social insurance, the Hospital Insurance Plan, approved retirement plans, hospital or health schemes, life insurance schemes and workers' compensation schemes.

Taxpayers must report actual remuneration up to a maximum annual remuneration of \$350,000 per employee. However, taxpayers

paying at the rates of 9.75%, 10.75%, 12.75% or 13.5% are allowed a quarterly reduction in remuneration of \$600 per employee if the employee is on the payroll at the end of the tax period and if the employee has worked for the employer for a minimum of 180 hours during the relevant quarter.

**Incorporation Fees.** The Bermuda Monetary Authority charge for an application to register a company is \$249. The government filing fee is \$74.

#### **D. Miscellaneous Matters**

**Types of Companies.** The limited liability company is the most common form of business entity in Bermuda. Limited liability companies may be local, exempted or permit, as described below.

*Local Companies.* Local companies must have Bermudian ownership of at least 60%. They may transact business worldwide or in Bermuda only.

*Exempted Companies.* Exempted companies may have Bermudian ownership of up to 20%. An exempted company is the most common form used by international businesses to transact business from Bermuda. In general, they may not compete with local companies in the Bermuda market nor own real estate in Bermuda. Examples of exempted companies include investment holding companies, trading companies, mutual fund companies, insurance companies and foreign sales corporations.

Under the Exempted Undertakings Tax Protection Act, 1966, an exempted company may apply for an undertaking by the government that taxation introduced in Bermuda will not apply to the exempted company until 28 March 2016. This undertaking is normally requested by exempted companies and routinely granted by the government.

*Permit Companies.* Permit companies are incorporated in jurisdictions other than Bermuda, but have a permit to transact business from Bermuda. Permits are obtained through a license granted by the Ministry of Finance. An example of a permit company is a ship-owning company that is incorporated and has ships registered in another country, but by permit conducts business from Bermuda.

**Foreign-Exchange Controls.** Exempted companies and nonresidents may trade and maintain bank accounts in any currency. Their remittance and repatriation of funds are not subject to exchange controls. Similarly, trust settlements on behalf of nonresidents are generally free from exchange controls.

The Bermuda dollar is pegged to the U.S. dollar at an equal exchange rate, and the two currencies are used interchangeably in Bermuda.

Exchange controls apply only to local companies and residents who work for local companies. The Bermuda-dollar accounts of residents and local companies are subject to a 0.50% tax on the purchase of a foreign currency.

**Transfer of Shares.** Although the consent of the Bermuda Monetary Authority is ordinarily required for the issue or transfer of any share or security, blanket permission for share issues and transfers may be granted, such as for publicly traded securities.

## BOLIVIA

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## A. At a Glance

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25 (a)
Branch Tax Rate (%)	25
Withholding Tax (%) (b)	
Dividends	12.5
Interest	12.5
Royalties	12.5
Professional Services	12.5 (c)
Branch Remittance Tax	12.5
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (d)

(a) See Section B.

(b) A 12.5% withholding tax is imposed on all payments of Bolivian-source income to foreign beneficiaries (see Section B).

(c) This withholding tax applies to services fees received for specified professional services, including consulting, expert services, and technical, commercial or other advice.

(d) The carryforward period is four years for merging companies.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Bolivian companies and foreign companies with permanent establishments in Bolivia are subject to tax on their Bolivian-source income.

**Rates of Corporate Tax.** The standard rate of corporate income tax is 25%.

A 25% surtax is imposed on net income derived from mining and from the extraction of hydrocarbons, reduced by the following two special deductions:

- A percentage of up to 33%, which varies according to the type of business, of accumulated investment in exploration, development, assets that qualify for environmental incentives and environmental protection, which is directly related to mining and hydrocarbon extractive activities performed after the 1991 tax year.
- 45% of net income derived from nonrenewable natural resource extractive activities. This deduction is limited to Bs 250 million. The amount of Bs 250 million is adjusted annually to reflect changes in the Unidad de Fomento de Vivienda (UFV) for each extracting operation. The UFV is an index published by the Statistics National Institute (INE) that reflects changes in Consumer Prices Index (IPC).

For companies that produce hydrocarbons, the net income for an extraction operation is the value of the production of oil from the petroleum field. For mineral producing companies, the net income for an extraction operation is the value of the commercialized product in the mining market.

The recently enacted Hydrocarbon Direct Tax is imposed at a rate of 32% on hydrocarbon production in oil wells located in Bolivia. This tax is imposed in addition to the 25% surtax described above. The Hydrocarbon Direct Tax is calculated and paid in the same manner as the 18% royal prerogatives, which apply to all extractive fields. The 18% royal prerogatives consist of the following:

- A regional royal prerogative equal to 11% of the gross hydrocarbon production from oil wells, which is paid to the region where the hydrocarbons are produced;
- A national royal prerogative equal to 1% of the gross hydrocarbon production, which is paid to Beni and Pando; and
- An amount equal to 6% of the gross hydrocarbon production in oil wells, which is paid to the National Treasury after the deduction of the necessary amounts for the management of the contracts.

**Capital Gains.** In general, capital gains are taxed in Bolivia. However, capital gains derived from transactions on the Bolivian Stock Exchange are not subject to tax.

**Administration.** The law specifies the following tax year-ends, which vary according to the type of business.

<b>Business</b>	<b>Tax Year-End</b>
Industry (including oil and gas)	31 March
Agriculture and agribusiness	30 June
Mining	30 September
All other businesses	31 December

A Supreme Decree that would change the closing dates for financial statements to 31 December for all companies is being considered.

Annual tax returns and financial statements must be filed with the Internal Revenue Service and income tax paid within 120 days

after the end of the tax year. Advance payments are not required except for mining companies, which must make payments of income tax when they export minerals or metals.

Debts owed to and credits due from the state are adjusted to reflect changes in the UFV (see Section B).

Fines and interest charges apply to late tax payments and other noncompliance with tax obligations. The Internal Revenue Service publishes interest rates for late tax payments.

The tax code provides that fraud exists if a tax debt exceeds an amount equal to 10,000 UFV, calculated as of the date of determination of the fraud (the current UFV is approximately US\$0.176079).

The Internal Revenue Service may carry out tax audits of private institutions within four years after the year a tax return is filed. This period is increased to seven years if an entity does not file tax returns or comply with internal revenue requirements.

**Withholding Taxes.** Local entities, including Bolivian permanent establishments of foreign companies, that pay Bolivian-source income to foreign beneficiaries must withhold 12.5% of the amounts paid. For this purpose, Bolivian-source income includes all dividends, interest payments, branch remittances, royalties, professional service fees (includes consulting, expert services, and technical, commercial or other advice), commissions and other income. In general Bolivian-source income is income that is derived from assets located, placed or economically used in Bolivia, or from activities developed in Bolivia. This rule applies regardless of the nationality, address, or residence of the recipient of the income or the parties involved in the activities, or where the relevant contract is executed.

For dividends paid by Bolivian companies, the withholding tax is payable when the dividends are actually remitted. However, branch profits are deemed remitted when the corporate income tax return is due (120 days after the end of the tax year; see *Administration* above).

**Dividends.** The 12.5% withholding tax on payments to foreign beneficiaries applies to dividends paid by Bolivian companies (see *Withholding Taxes* above). Dividends received from Bolivian companies subject to Bolivian corporate income tax are not taxed.

**Foreign Tax Relief.** The Bolivian tax code does not provide foreign tax relief.

### C. Determination of Trading Income

**General.** Taxable income is the income reported in the companies' financial statements prepared in accordance with generally accepted accounting principles, subject to certain adjustments for tax purposes. In general, all expenses necessary to generate income and to maintain the existence of the company (for example, contributions to regulatory-supervisory organizations, contributions for social benefits and certain national and municipal taxes) are deductible. Donations and other gratuitous transfers to nonprofit organizations that are exempt from income tax may be deducted up to a maximum limit of 10% of taxable income derived in the year of the donation or gratuitous transfer.



Certain expenses are not deductible, including the following:

- Personal withdrawals by owners or partners.
- Corporate income tax.
- Bonuses and other benefits that are not paid to employees within the time period in which the annual form must be presented for the year of payment.
- Interest paid to related parties, to the extent it exceeds, for foreign loans, the London interbank offer rate (LIBOR), plus 3%, or, for local loans, the official lending rate. In addition, interest paid to related parties may not exceed 30% of the interest paid to third parties.

Revenue and expenses are reflected in the year they are accrued.

**Inventories.** Inventories are valued at the lower of market value or replacement cost.

**Provisions.** Provisions and reserves are not deductible for tax purposes, with the exception of annual charges with respect to termination compensation.

**Depreciation and Amortization.** Fixed assets are generally depreciated using the straight-line method at rates specified by law. The following are some of the annual depreciation rates.

<b>Assets</b>	<b>Rate (%)</b>
Buildings	2.5
Machinery and equipment	12.5
Vehicles	20
Furniture and office equipment	10
Computer equipment	25

Trademarks and similar intangible assets may be amortized only if they are valued using the purchase price.

Depreciation charges resulting from changes in value based on professional appraisals carried out after 31 December 1994 are not deductible for tax purposes.

**Groups of Companies.** Groups of companies may not file consolidated returns in Bolivia.

**Relief for Losses.** Bolivian-source losses may be carried forward indefinitely to offset taxable income in future years. The carry-forward period for merging companies is limited to four years.

Losses are adjusted by the UFV index (see Section B).

## **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax (VAT), on all sales of goods and services and on imports; VAT on capital goods imported by companies in the agriculture and cattle raising industries and non-extractive industries that will be used to produce goods for export may be deferred for up to 3 years if an advance payment of 10% is made	13%

Nature of Tax	Rate
Transactions Tax, on gross revenue; corporate income tax from the preceding year may be credited against Transactions Tax; sales of a limited liability partnership's capital quota are exempt	3%
Real estate tax, imposed annually on the assigned value of real property and vehicles	Various
Excise tax, on the production or importation of specified goods	
Beer, wine and liquor	Bs 1.98 per liter
Nonalcoholic beverages	Bs 0.25 per liter
Tobacco products; rate applied to the price	50%
Vehicles; rate applied to the price	10% to 18%
Special Tax on Hydrocarbons and Derived Products; imposed on the production or importation of specified products	
Premium gasoline	Bs 2.31 per liter
Special gasoline	Bs 1.36 per liter
National diesel oil	Bs 1.37 per liter
Aviation gasoline	Bs 1.98 per liter
Kerosene	Bs 0.42 per liter
National jet fuel	Bs 0.45 per liter
International jet fuel	Bs 4.40 per liter
Agrofuel	Bs 0.69 per liter
Fuel oil	Bs 0.52 per liter
Complementary Tax on Minerals Activities; imposed on gross revenue; rates vary according to the type of mineral	Various
Financial Transactions Tax (ITF); imposed on the amounts of debits and credits to savings and checking accounts. ITF is not deductible for purposes of any other tax; ITF is effective from 25 July 2006 for a period of three years; certain items are exempt including transactions regarding savings accounts in U.S. dollars if available balance is not higher than US\$2,000, savings accounts in local currency or in UFV, securities transactions and payments resulting from foreign remittances; tax is withheld by banks and other financial institutions and other entities carrying out transactions in payment system	0.15%
Social security contributions	
Employer	
Health care; on monthly gross revenue per employee	10%

Nature of Tax	Rate
Housing fund; on monthly gross revenue per employee	2%
Professional risk insurance; on monthly gross revenue per employee up to US\$3,750	1.71%
Employee; on monthly total salary up to US\$3,750 for pension (retirement) fund (expatriates do not pay this contribution if they can prove payment of such contribution in another country)	12.21%
Christmas bonus (Aguinaldo); generally paid between 1 December and 20 December each year; if employment is less than a year, the bonus is reduced pro rata	One month's salary
Termination compensation; bonus for termination of employment; amount depends on length of employment and whether the employee was fired or resigned	Various

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Bolivian currency is the boliviano (Bs).

No restrictions are imposed on foreign-exchange transactions, including the repatriation of capital and the remittance of dividends and royalties abroad. A system of free-floating exchange rates exists in Bolivia. No special registration requirements apply to foreign investment.

The current exchange rate is Bs 7.50 = US\$1.

**Transfer Pricing.** Bolivian law does not contain transfer-pricing rules. However, branches and other legal establishments of foreign companies in Bolivia must maintain their accounting records separately from their head office and other branches and establishments abroad.

Transactions between "Bolivian companies comprised of foreign capital" and foreign companies and individuals who directly or indirectly control the company are deemed to be entered into by independent parties. For this purpose, control is defined as the holding of 50% or more of the capital or decision-making power in the company. The tax authorities may adjust the prices in the transaction to reflect normal market practices between independent entities.

For purposes of the above rules, a "Bolivian company comprised of foreign capital" is a company that is directly or indirectly controlled by individuals residing or established abroad.

**Reorganizations.** Profits arising from company reorganizations, which are mergers, divisions or transformations, are not subject to corporate income tax. Regulations on reorganizations are expected to be issued in the near future.

## F. Tax Treaties

Bolivia has entered into tax treaties with Argentina, France, Germany, Spain, Sweden and the United Kingdom. It has also signed the Andean Pact, which includes a tax treaty, with Colombia, Ecuador and Peru.

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(Country Code 267)

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## A. At a Glance

Corporate Income Tax Rate (%)	
Basic Rate	15 (a)
Additional Company Tax	10
Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	15 (c)
Interest	15
Royalties	15
Management and Technical Fees	15
Payments under Construction Contracts	3 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0 (e)
Carryforward	5

(a) For approved manufacturing companies, the rate is 5%.

(b) See Section B.

(c) It may be offset against the 10% additional company tax.

- (d) This tax is imposed on gross receipts derived from construction contracts. This tax is an advance payment that may be offset against the actual tax due.
- (e) Farming enterprises may carry back losses for two years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** All companies operating in Botswana are subject to tax on earnings in Botswana.

**Rates of Corporate Tax.** The corporate tax rate for companies other than manufacturing companies is 15% plus a 10% additional company tax (ACT). Approved manufacturing companies are subject to tax at a reduced basic tax rate of 5% plus a 10% ACT. ACT is set off against withholding tax due on dividends. The ACT can be carried forward for a period of up to five years from the tax year in which it was paid.

The tax rate for a branch is 25%. The reduced 5% rate for approved manufacturing companies does not apply to branches. Botswana does not impose a branch remittance tax.

International Financial Services Centre (IFSC) companies (as defined) are taxed at an effective rate of 15%.

Diamond-mining companies are taxed in accordance with tax agreements entered into by the companies with the government. Other mining companies are taxed at a rate of 25% or at a rate determined by a formula, whichever is higher. The following is the formula:

$$x = \frac{70 - \frac{1500}{x}}{\frac{\text{taxable income}}{\text{gross income}}} \times 100$$

**Capital Gains.** The capital gains tax applies to gains on the sale of capital assets of a business carried on in Botswana and on the sale of corporate shares and debentures of private companies.

For computing gains on sales of immovable property acquired before 1 July 1982, the cost of acquisition and improvements is first increased by a 10% rate, compounded for each complete 12-month period from the date of acquisition to 1 July 1982. It is then indexed for inflation from 1 July 1982 to the date of sale. For computing gains on immovable property acquired on or after 1 July 1982, the cost of acquisition and improvements is indexed for inflation during the period of ownership.

Only 75% of the gain derived from the sale of shares is subject to capital gains tax. Gains on the sale of shares listed on the Botswana Stock Exchange are exempt from capital gains tax if the seller holds not more than 49% of the shares. Sales of shares in IFSC companies are exempt from capital gains tax.

Taxable capital gains are subject to tax at a rate of 25%.

**Administration.** The tax year ends on 30 June. Companies are taxed on the profits reported in their latest completed accounting period.

Under an advance payment of tax and self-assessment system, companies must estimate their tax in advance and pay the estimated tax in four equal quarterly installments. The first payment is due

three months after the beginning of the accounting period and the subsequent payments are due at the end of every subsequent three-month period. Tax returns must be filed, and any balance of tax due must be paid, within four months of the end of the tax year, or in the case of a company with an accounting period that is different from the tax year, within four months from the end of such accounting period. Underpayments and late payments are subject to interest at a rate of 1.5% per month.

**Dividends.** A withholding tax of 15% is levied on all dividends paid to residents and nonresidents. It is a final tax and may be offset against the 10% ACT (see *Rates of Corporate Tax* above).

Dividends distributed by investment or similar companies are exempt from tax if they are paid out of dividends received that suffered withholding tax.

### C. Determination of Trading Income

**General.** Taxable income is net income reported in the financial statements, modified by certain provisions of the tax law. Expenses are deductible to the extent incurred in producing assessable income.

The rules for determining taxable income for an IFSC company are different from those for a normal company.

Collective-investment undertakings (as defined) are subject to tax on their undistributed income only.

**Inventories.** For tax purposes, inventory is valued at the lower of cost or net realizable value.

**Provisions.** Specific identifiable provisions are allowable for tax purposes; general provisions are not allowed.

**Depreciation.** Depreciation is computed using the straight-line method. Official rates vary according to the type of asset. The following are some of the official straight-line rates.

Asset	Rate (%)
Industrial buildings	2.5
Office equipment	10
Motor vehicles	25
Plant and machinery	15 to 25

Capital allowances are subject to recapture on the sale of an asset to the extent that the sales proceeds exceed the tax value after depreciation.

Mining companies may deduct 100% of their mining capital expenditure (as defined) in the year in which the expenditure is incurred.

**Relief for Losses.** In general, tax losses may be carried forward for five years. Mining, prospecting and farming losses may be carried forward indefinitely. In general, losses may not be carried back. However, farming enterprises may carry back losses to the preceding two years.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on almost all supplies of goods and services consumed in Botswana	10
Capital transfer tax, paid by the recipient on all gratuitous receipts of property, corporate shares and inheritances, less allowable deductions	12.5

### E. Foreign-Exchange Controls

Foreign-exchange controls have been completely abolished. However, certain forms must be completed for statistical purposes.

### F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %	Management and Technical Fees %
Barbados	5/12 (e)	10	10	10 (f)
France	5/12 (a)	10	10	7.5
Mauritius	5/15 (b)	12	12.5	15
Namibia	10	10	10	15
Seychelles	5/10 (g)	7.5	10	10
South Africa	10/15 (c)	10	10	10
Sweden	15 (d)	15 (d)	15 (d)	15
United Kingdom	5/12 (h)	10	10	7.5
Nontreaty countries	15 (i)	15	15	15

- (a) The 5% rate applies if the recipient is a company that holds at least 25% of the share capital of the payer.
- (b) The 5% rate applies if the recipient holds at least 25% of the shares of the payer.
- (c) The 10% rate applies if the recipient is a company that holds at least 25% of the share capital of the payer.
- (d) If a lower rate is negotiated with any other state in a future treaty, such rate also applies under the Sweden treaty.
- (e) The 5% rate applies if the recipient is a company that holds at least 25% of the capital of the payer of the dividends. The 12% rate applies in all other cases.
- (f) If a lower rate is negotiated with any other state in a future treaty, such rate also applies under the Barbados treaty.
- (g) The 5% rate applies if the recipient is a company that holds at least 25% of the capital of the payer of the dividends. The 10% rate applies in all other cases.
- (h) The 5% rate applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 25% of the voting power in the company paying the dividends. The 12% rate applies in all other cases.
- (i) See Section B.

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**A. At a Glance**

Corporate Income Tax Rate (%)	15 (a)
Capital Gains Tax Rate (%)	15 (a)
Branch Tax Rate (%)	15 (a)
Withholding Tax (%)	
Dividends	0
Interest	15 (b)(c)
Royalties from Patents, Know-how, etc.	15 (b)(c)(d)
Services	15 (b)(c)(d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- (a) A 10% surtax is also levied (see Section B).
- (b) Withholding tax on payments, credits or remittances abroad.
- (c) The withholding tax rate may increase to 25% if the recipient is resident in a jurisdiction that taxes income at a rate lower than 20% (that is, a low-tax jurisdiction for Brazilian tax purposes).
- (d) A 10% Contribution for Intervention in the Economic Domain (Contribuição de Intervenção no Domínio Econômico, or CIDE) is imposed on royalties and on technical and administrative service payments. A CIDE tax credit is granted with respect to royalties paid for patents and trademarks. The applicability of the CIDE to pure services has been the subject of discussion. However, in accordance with recent administrative decisions that may be questionable, the CIDE is being levied on all types of services.
- (e) For details, see Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Brazilian resident companies are subject to corporate income tax (CIT) on their worldwide income. Companies resident in Brazil are those incorporated under the Brazilian laws and managed in Brazil.

Foreign branches, agencies or representative offices of Brazilian companies are also subject to Brazilian tax on their income earned overseas. In general, foreign-source losses may not offset Brazilian-source income. A foreign tax credit is available (see *Foreign Tax Relief* below).

In addition to CIT, Social Contribution Tax (SCT) is imposed on worldwide income (see *Rates of Tax* below).

**Rates of Tax**

*Corporate Income Tax.* The basic rate of CIT is 15%, increased by a surtax of 10% on annual taxable profits exceeding R\$240,000 (approximately US\$133,333).

Exemption from, or reduction of, income tax is granted to businesses in certain underdeveloped areas.

*Social Contribution Tax.* SCT is levied at a rate of 9%.

SCT is not deductible in calculating CIT. The tax bases for SCT and CIT are basically the same. However, certain specific adjustments that are required for CIT purposes do not apply to SCT.

The total effective tax rate on corporate profits is 34% (25% CIT [including the 10% surtax] plus 9% SCT).

Losses for SCT purposes are subject to the same tax rules applicable to losses for CIT purposes.

**Capital Gains.** Capital gains are treated as ordinary income and, accordingly, are subject to CIT and SCT. In general, capital gains derived by nonresidents on shares are subject to capital gains tax at a rate of 15%. A 25% rate applies to nonresidents located in low-tax jurisdictions.

### Administration

*Filing and Payment.* The fiscal year is the calendar year. Companies must file returns in an electronic format by the last working day of June of the following year. Extensions to file returns are not available.

Companies may elect to pay CIT and SCT on an annual or quarterly basis. In general, this election may not be changed during the calendar year. Companies that elect the annual basis must make advance monthly payments of CIT and SCT. The advance payments are equal to the income tax applicable to either the company's actual taxable income or the company's income calculated in accordance with an estimated method, whichever is lower.

For monthly payments of CIT that are calculated based on the estimated method, the tax base is generally 8% of the company's gross income. Different percentages apply to specific industries, such as the following: 16% for financial institutions and transportation services; 32% for services in general; and 1.6% for gas distribution.

For the purpose of computing the advance income tax payments, the applicable rate is 15%. An additional 10% rate is applied to monthly taxable income in excess of R\$20,000 (approximately US\$11,111).

The difference between the tax shown on the annual tax return and the amounts paid in advance must be paid by the last working day of March following the end of the fiscal year. If the amounts paid in advance exceed the tax shown on the annual tax return, the excess may be used to offset the tax due in a month following the fiscal year-end. A refund may be requested from the tax authorities within five years of the tax payment.

Alternatively, companies may pay tax quarterly based on actual quarterly income, computed under the accrual method.

The tax base for monthly estimated payments of SCT is generally 12% of gross income plus capital gains and other income, including financial income. This percentage is increased to 32% for service companies. SCT payments must be made at the same time as the income tax payments. The applicable tax rate is 9%.

*Interest and Penalties for Late Payments.* The late payment of taxes is generally subject to the following:

- Interest calculated at the rate applicable to the Special Liquidation and Custody System (Sistema Especial de Liquidacao e Custodia, or SELIC), which is published each month by the government; and

- A daily fine of 0.33% of the tax due, up to a maximum penalty of 20% of the tax due (excluding interest).

Assessments resulting from a tax audit are subject to a penalty of 75% on the tax due. The penalty increases to 150% in the case of fraud. These penalties can be reduced by 50% if the payment is made by the last day of the appeal period (other penalty reductions are available during the appeal process). In such case, the effective penalty is 37.5%.

**Dividends.** Withholding tax is not imposed on dividends paid to residents and nonresidents out of profits generated on or after 1 January 1996.

**Foreign Tax Relief.** A foreign tax credit is available to Brazilian companies on income taxes paid overseas. In general, the foreign tax credit is limited, up to the amount of Brazilian CIT and SCT on the foreign income.

### **C. Determination of Taxable Income**

**General.** CIT and SCT are due on a company's taxable income, which is the net book income, as adjusted by the tax law. In general, operating expenses are deductible if the following conditions are satisfied: they are necessary, usual and common to the company's activity; they are actually incurred; and they are supported by proper documentation. However, the following expenses are not deductible:

- Expenses related to fixed assets, including financial and operating lease payments, depreciation and amortization, if the assets are not directly used in the production or commercialization of products and services.
- Fringe benefits furnished to shareholders and officers if the beneficiaries are not identified and individualized (a 35% [effective rate of 53.84%] withholding tax is imposed on such payments). Neither the fringe benefits nor the withholding tax is deductible.
- Donations in general, gifts and other noncompulsory payments.

Simplified methods are available for calculating the tax liability applicable to small businesses.

**Inventories.** Companies that have an integrated cost system must value inventory for tax purposes at the lower of cost or market value, using either the average cost or the first-in, first-out (FIFO) method. Direct cost and last-in, first-out (LIFO) methods cannot be used. In general, companies that do not have an integrated cost system must value finished products at 70% of the highest sales price of the product sold in the tax period. Work-in-process must be valued at either 80% of the finished product cost or 1.5 times the highest cost of the material content. Supermarkets and similar enterprises that sell a large number of goods may use a specific system for inventory valuation based on periodic and simplified counting.

**Provisions.** In general, the only deductible provisions are those for vacation pay and the 13th month salary (annual bonus). Other provisions are not deductible, with the exception of technical provisions that are compulsory for financial institutions.

**Depreciation.** Fixed assets may be depreciated using the straight-line method at rates provided by the Brazilian tax authorities. The following are some of the annual depreciation rates: real estate assets, 4%; machinery and equipment, 10%; vehicles, 20%; and computer hardware and software, 20%. Companies that operate two work shifts per day may depreciate machinery and equipment at 1.5 times the normal rate. If the company operates three shifts, it may double the normal rate.

**Tax Losses.** Tax losses may be carried forward indefinitely, but can only offset up to 30% of the company's taxable income for a tax period. No carryback is allowed.

Tax losses may be jeopardized if a company experiences a change in business activity and ownership control between the period in which losses were generated and the period in which losses would otherwise be used to offset taxable income. In general, nonoperating tax losses can be offset only against nonoperating gains. In a corporate restructuring involving a merger, the tax losses of the merged company must be written off.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
State value-added tax (ICMS)	0 to 25
General rate	18
Basic rate if goods shipped within a southeastern Brazilian state	17/18
Basic rate if goods shipped within another Brazilian state	7 to 12
Exports	Exempt
Federal value-added tax (IPI); the top rate applies to luxury or superfluous goods, such as alcoholic beverages and cigarettes	0 to 365.6
Tax on Financial Operations (IOF)	0 to 25
Social Integration Program (PIS) tax; levied on gross income at a rate of 1.65%; the tax is a non-cumulative (VAT-type) tax for certain taxpayers; certain companies, including local financial institutions, are subject to the cumulative regime and make the contribution at a 0.65% rate; the tax is also levied on imports of goods and services at a rate of 1.65%	0.65/1.65
Social security financing contribution (COFINS); levied on gross income at a rate of 7.6%; the tax is a non-cumulative (VAT-type) tax for certain taxpayers; certain companies, including local financial institutions, are subject to the cumulative regime and make the contribution at a 3% rate; the tax is also levied on imports of goods and services at a rate of 7.6%	3/7.6
Municipal Service Tax (ISS)	2 to 5

Nature of Tax	Rate (%)
Social security contributions (INSS), on monthly salary; paid by Employer	26.8 to 28.8
Employee, depending on amount of remuneration (amount may not exceed approximately US\$176 a month)	7.65 to 11
Severance Pay Indemnity Fund (FGTS), on monthly salary	8
Bank Transactions Tax (Contribuição Provisória sobre Movimentação Financeira, or CPMF); imposed on cash withdrawals from Brazilian bank accounts	0.38
Withholding tax on local payments of professional service fees (creditable by the recipient against corporate income tax)	1.5
Contribution for development of cinematographic and video phonographic works (Condecine); in general, tax rate applied to amounts paid to producers, distributors and intermediaries abroad for the exploitation of cinematographic and video phonographic works	11

## E. Miscellaneous Matters

**Foreign Investment.** All foreign investments, such as equity or debt investments, must be registered with the Central Bank of Brazil (BACEN) to assure the payment of dividends and interest, or the repatriation of capital. Nonresidents holding assets and rights in Brazil, such as equity investments, portfolio investments and debt investments, must be registered with the Brazilian tax authorities. On registration, the nonresidents obtain a tax identification (CNPJ). Failure to comply with the foreign exchange regulations and associated requirements is subject to significant penalties. This particularly applies to evasion, false statements and private offsetting transactions.

Contracts for the supply of technology and technical services, and for the use of trademarks and patents between residents and non-residents must also be registered with BACEN and the National Institute of Industrial Property (INPI). The registration allows Brazilian companies to pay and deduct the royalties up to the amounts prescribed by law.

**Transfer Pricing.** Brazilian transfer-pricing rules apply only to cross-border transactions entered into between Brazilian companies and foreign related parties. A transaction entered into between a Brazilian company and a resident of a low-tax jurisdiction is also subject to the transfer pricing rules, even if the parties are not related. In general, Brazilian transfer-pricing rules do not follow the transfer pricing guidelines outlined in the Organization for Economic Cooperation and Development (OECD) Model Convention and the U.S. rules. For example, Brazilian transfer pricing rules adopt fixed-profit margins on transactions carried out between related parties. Safe harbor measures may be applied to Brazilian exports.

**Controlled Foreign Companies.** The profits realized by a controlled foreign company (CFC) of a Brazilian company are subject to income taxation on 31 December of each year regardless of any actual distribution by the CFC.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends %	Interest %	Royalties (j) %
Argentina	0	15 (c)	– (l)
Austria	0	15 (c)	15 (b)(k)
Belgium (m)	0	15 (a)(c)	15 (b)(k)
Canada	0	15 (a)(c)	15 (k)
Chile	0	15	15
China	0	15 (c)	15 (k)
Czechoslovakia (g)	0	15 (c)(e)	15 (k)
Denmark	0	15 (c)	15
Ecuador	0	15 (c)	15 (k)
Finland	0	15 (c)	15 (b)(k)
France	0	15 (a)(c)	15 (b)(k)
Hungary	0	15 (c)(f)	15 (k)
India	0	15 (c)	15 (k)
Israel	0	15 (c)	15 (h)
Italy	0	15 (c)	15 (k)
Japan	0	12.5 (c)	12.5 (d)
Korea	0	15	10 (k)(o)
Luxembourg	0	15 (a)(c)	15 (k)
Mexico	0	15	10 (o)
Netherlands	0	15 (a)(c)	15 (k)
Norway	0	15 (c)	15 (k)
Paraguay (i)	0	15 (c)	15
Philippines	0	15 (c)	15 (k)
Portugal	0	15 (c)	15
Russian Federation (i)	0	15	15
South Africa	0	15	10 (n)
Spain	0	15 (c)(e)	10 (n)(o)
Sweden	0	15 (c)	15 (k)
Ukraine	0	15 (c)	15
Venezuela (i)	0	15	15
Nontreaty countries	0	15	15

- (a) The withholding rate is 10% for interest on certain bank loans with a minimum term of seven years.
- (b) The withholding rate is 10% for royalties for copyrights of literary, artistic or scientific works, or for films or videotapes for television or radio broadcasting produced by a resident of a contracting state.
- (c) Interest paid to the government of the other contracting state, a political subdivision thereof or any agency (including a financial institution) wholly owned by that government or political subdivision thereof is exempt from tax.
- (d) The withholding rate is 15% for royalties arising from copyrights of cinematographic films and films or tapes for radio or television broadcasting.
- (e) The withholding rate is 10% for interest on certain long-term (at least 10 years) bank loans.
- (f) The withholding rate is 10% for interest on certain long-term (at least eight years) bank loans.
- (g) Brazil is honoring the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (h) This rate applies to royalties related to the use, or the right to use, trademarks. For other royalties, the rate is 10%.
- (i) This treaty has been signed, but it has not yet been ratified.
- (j) The tax treaties do not apply to the CIDE (see footnote [d] to Section A).

- (k) The withholding tax rate is 25% for royalties paid for the use of trademarks.
- (l) The treaty does not provide a maximum rate for royalties.
- (m) A protocol amending this treaty was signed on 20 November 2002, but the protocol has not yet been ratified.
- (n) The withholding rate is 15% for royalties for the use, or the right to use, trademarks.
- (o) The withholding tax rate applicable to royalties was reduced as a result of the most favorable clause contained in the protocol to the treaty. This clause provides for a rate reduction if a future treaty establishes a lower rate. Because of the treaty between Brazil and Israel, the withholding tax rate on royalties was reduced to 10% (except for trademark royalties).

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## BRITISH VIRGIN ISLANDS

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*Please direct all inquiries regarding the British Virgin Islands to the contacts listed in the Barbados chapter, page 64.*

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### A. At a Glance

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	0

### B. Taxes on Corporate Income and Gains

Effective from 1 January 2005, companies incorporated under the British Virgin Islands Companies Act are exempt from taxes under the British Virgin Islands (BVI) Income Tax Ordinance. The BVI Business Companies Act (BVI BC Act) entered into force on 1 January 2005. This new act is essentially an amalgamation of the International Business Companies (IBC) Act and the BVI Companies Act, which contained the regime under which domestic companies were incorporated in the BVI. In addition, on 1 January 2007, all International Business Companies on the register in the BVI were automatically reregistered under the BVI BC Act, and the IBC Act was repealed.

All Business Companies (BCs) are statutorily exempt from BVI taxes. However, such companies must pay an annual license fee (see Section C). In general, a BC may not transact business with persons resident in the BVI or own interests in real property located in the BVI unless it obtains the relevant trade license from the BVI government. A BC may not carry on business as a bank, trust company, insurance company or reinsurance company without a license from the BVI Financial Services Commission.

### C. Fees and Stamp Duties

The table below summarizes the fees and stamp duties payable in the BVI.

Nature of Fees and Duties	Rate
Annual license fees	
Business Companies incorporated under the BVI BC Act, with authorized share capital of	
Up to US\$50,000 or foreign-currency equivalent or authorized to issue up to 50,000 shares	US\$350

<b>Nature of Fees and Duties</b>	<b>Rate</b>
Exceeding US\$50,000 or foreign-currency equivalent or authorized to issue more than 50,000 shares	US\$1,100
General banking license	US\$20,000
Restricted Class I Banking License	US\$16,000
Restricted Class II Banking License	US\$16,000
Insurance company license	US\$2,000
General trust license	US\$10,000
Restricted trust license	US\$300
Stamp duties, on various instruments and transfers of ownership	
Real estate, on higher of consideration or market value	
Sales to belongers (individuals born in the BVI or those granted BVI status and BVI companies that are at least 67% owned by such persons and do not have any nonbelongers as directors)	4%
Sales to nonbelongers	12%
Other instruments and transfers	0.2% to 5%

#### **D. Miscellaneous Matters**

**Foreign-Exchange Controls.** The BVI does not have any foreign-exchange control regulations.

**European Union Savings Directive.** As a result of the BVI's status as a British Overseas Territory, it is required to comply with the requirements of the European Union (EU) Savings Directive. Banks and other paying agents in the BVI offer EU resident individuals the option of deduction of withholding tax or exchange of information.

Under the withholding tax option, banks and other paying agents automatically deduct tax from interest payments made to EU resident individuals. The following are the withholding tax rates:

- 15%, effective from 1 January 2005;
- 20%, effective from 1 January 2008; and
- 35%, effective from 1 January 2011.

Seventy-five percent of the above withholding tax is remitted to the tax authorities in the EU member state of the recipient, and the balance is paid to the tax authorities in the BVI.

#### **E. Tax Treaties**

The British Virgin Islands has entered into a tax treaty with Switzerland.

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## A. At a Glance

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	0
Interest	20 (b)
Royalties	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	6

- (a) This is the standard rate. The rate of petroleum income tax is 55%.  
 (b) Applicable to payments to nonresident companies. For the definition of a non-resident company, see Section B.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Limited companies, regardless of whether they are incorporated overseas or locally or are registered as a branch of a foreign company, are subject to a tax on income accruing in, derived from or received in Brunei Darussalam.

Branches of foreign companies are taxed on their profits arising in Brunei Darussalam at the same rates as corporations. Financial accounts of branches need not be audited, but should be prepared to support the tax computations.

**Rate of Corporate Income Tax.** The income tax rate is 30% for resident and nonresident companies, except for those engaged in petroleum operations. The rate of petroleum income tax is 55%.

Certain enterprises and industries may be exempted from taxation if they are considered essential for the development of the country.

**Capital Gains.** Capital gains are not taxed. Capital losses are not deductible. However, if assets have been acquired for resale rather than for a company's use, any profit from the sale is regarded as taxable income.

**Administration.** The tax year is the calendar year.

Corporations must file annual tax returns within three months of the date stamped on the tax return. Extensions of time to file are subject to the approval of the tax authorities.

**Interest.** A 20% withholding tax is imposed on interest paid to nonresident persons, which include companies and bodies of persons. A nonresident company is one that is not incorporated in Brunei Darussalam and does not have a place of business there.

**Foreign Tax Relief.** Foreign income that is not received in Brunei Darussalam is free from tax. Brunei Darussalam has entered into double tax treaties with China, Indonesia, Singapore and the United Kingdom. Both resident and nonresident companies may also apply for unilateral relief on income arising from British Commonwealth countries offering reciprocal relief. However, the maximum relief cannot exceed half the Brunei Darussalam rate.

### C. Determination of Trading Income

**General.** The following sources of income are subject to tax:

- Gains or profits from any trade, business, profession or vocation;
- Gains or profits from employment;
- Net annual value of land and improvements occupied or used rent-free for residential or enjoyment purposes;
- Dividends, interest or discounts;
- Pensions, charges or annuities; and
- Rents, royalties, premiums and any other profits arising from property.

In computing taxable income, normal business expenses may be deducted.

Interest expenses are allowed as a deduction only if the loan generating the charge is used for the production of taxable income.

**Provisions.** Provisions for debts are tax-deductible only if they are made against specific bad debts.

**Tax Depreciation.** Depreciation charged in the financial accounts is not deductible for tax purposes. Instead, capital allowances (tax depreciation) are permitted.

*Industrial Buildings.* An initial allowance of 10% of the qualifying expenditure is given on industrial buildings in the year of expenditure, with a further annual allowance of 2% of qualifying expenditure provided on a straight-line basis until the total expenditure is written off.

*Plant and Machinery.* An initial allowance of 20% of the cost of plant or machinery is given in the year of expenditure, with an annual allowance given on the declining value of the asset. The rates depend upon the type of asset and range from 3% to 25%.

*Mining.* All expenditure incurred in connection with the working of a mine or other source of mineral deposit of a wasting nature is considered qualifying mining expenditure. An initial allowance of 10% of the qualifying expenditure is given in the year of expenditure, with annual depletion allowances deductible over the life of the mine. These are determined by multiplying the residue of the capital expenditure by the greater of 20% and the following fraction:

$$\frac{\text{Output for the year}}{\text{Output for the year plus estimated future output}}$$

*Disposals.* When an asset is sold, scrapped or destroyed, a balancing allowance or charge is made, based on the difference between the disposal price and the depreciated value on disposal. The balancing charge may be deferred if the plant and machinery disposed of are replaced by similar assets.

**Relief for Losses.** Losses may be carried forward for up to six years to offset future profits. Continuity of trade or ownership is not required to carry forward losses. Losses in one trade or business may be set off against other sources of income for the same year of assessment.

Unabsorbed capital allowances may be carried forward indefinitely, provided the company continues to carry on the same trade or business.

**Groups of Companies.** No special rules or reliefs apply to groups of companies; each company is taxed on its own income as appropriate.

## D. Double Tax Treaties

Brunei Darussalam has entered into double tax treaties with China, Indonesia, Singapore and the United Kingdom.

Under domestic tax law, Brunei Darussalam imposes a 20% withholding tax on interest paid from Brunei Darussalam to nonresident persons (see Section B). Dividends and royalties paid from Brunei Darussalam are not subject to withholding tax.

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*The following chapter reflects changes for 2008 to the Corporate Income Taxation Act.*

## A. At a Glance

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10
Withholding Tax (%)	
Dividends	5 (a)(b)
Interest	10 (a)(c)
Royalties from Patents, Know-how, etc.	10 (a)(c)

Fees for Technical Services	10 (a)
Rent and Payments Under Lease, Franchising and Factoring Agreements Derived from Sources in Bulgaria	10 (a)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This tax does not apply to payments to Bulgarian entities  
(b) This rate may be reduced by tax treaties or under the rules incorporating the European Union (EU) Parent-Subsidiary Directive.  
(c) This rate also applies to payments to EU affiliates during the transitional period allowed to Bulgaria. The first phase of this period ends on 31 December 2010, and the final phase ends on 31 December 2014. This rate may be reduced by tax treaties.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Bulgarian companies are subject to corporate tax on their worldwide income. Bulgarian companies are companies incorporated in Bulgaria. Foreign companies are taxed in Bulgaria on their profits generated from activities conducted through a permanent establishment in the country and on income from Bulgarian sources.

**Rates of Corporate Tax.** The corporate tax rate is 10%.

A one-off tax of 10% is imposed on certain expenses, such as employee-related fringe benefits and representation-related expenses, thereby increasing the effective tax rate for companies incurring such expenses (see Section D).

**Capital Gains and Losses.** Capital gains from disposals of assets, including shares, are subject to tax at the standard corporate tax rate. No rollover relief is provided. Capital losses are deductible for tax purposes.

A 10% withholding tax is imposed on capital gains derived by nonresidents.

Capital gains derived from the sale of shares listed on the Bulgarian stock market are exempt from tax.

**Administration.** The tax year is the calendar year. Annual tax returns must be filed by 31 March of the year following the tax year.

Companies subject to tax must make monthly advance payments of tax. Newly established companies and companies with sales of less than BGN 200,000 for the preceding tax year are not required to make advance payments. For the period of 1 January through 31 March, the tax base for the monthly advance payments is one-twelfth of the company's taxable income for the tax year two years before the current tax year. For the period of 1 May through 31 December, the tax base is one-twelfth of the taxable income for the preceding tax year. For the April advance payment, the tax base is one-twelfth of the taxable income for the preceding tax year, adjusted by three times the difference between that amount and the monthly advance payment for the period 1 January through 31 March. Depending on whether the taxable income two years ago was lower or higher than the taxable income of the preceding year, the application of this rule may result in an

increase or decrease of the tax base. The tax rate for calculating the advance payments is 10%. Companies that generated losses in the preceding year must make quarterly advance payments on the basis of their actual taxable income for the respective quarters. No quarterly payment is required for the last quarter.

Monthly advance payments are due on the 15th day of the respective month; quarterly advance payments are due on the 15th day after the end of the respective quarter.

Companies must pay the corporate tax due for the tax year, less the advance installments, by 31 March of the following year.

The one-off tax on certain expenses (see Section D) is payable on the 15th day of the month following the month of payment of the expenses.

**Dividends.** A 5% withholding tax is imposed on dividends paid by Bulgarian companies to foreign companies.

A 0% rate applies to dividends paid to an entity from another European Union (EU) state if the following conditions are satisfied:

- The parent company receiving the dividends is considered to be resident for tax purposes in the other EU-member state, based on the domestic law of that state;
- The Bulgarian company is subject to Bulgarian corporate tax; and
- The parent company holds at least 15% of the shares of the Bulgarian company distributing the dividends for at least two years.

Remittances of profits by branches to their home countries are not subject to withholding tax.

**Foreign Tax Relief.** Bulgarian companies are entitled to a tax credit for identical or similar foreign taxes imposed abroad. The tax credit is limited to the amount of Bulgarian tax that would have been paid in Bulgaria on the income subject to the foreign tax. In addition, a per-country limitation applies. Bulgarian tax treaties normally provide an exemption from Bulgarian taxation for income from foreign real estate and foreign permanent establishments.

## **C. Determination of Taxable Income**

**General.** Taxable income is based on annual accounts prepared in accordance with Bulgarian accounting principles. However, taxable income does not equal the profit shown in the accounts, because certain adjustments to expenses are required for tax purposes with respect to items, such as accrual for unused leave, depreciation and impairment of assets.

The write-down of assets as a result of impairment is not deductible for tax purposes. The loss is deductible on realization.

**Inventories.** All cost methods that are applicable under International Financial Reporting Standards (IFRS) may be used for tax purposes. For manufacturing entities, the quantity of raw material exceeding the usual quantity of raw materials required for the production of a particular unit is treated as avoidance of taxation and is subject to adjustment for tax purposes.

**Provisions.** Provisions on receivables are not deductible for tax purposes until their materialization or the expiration of the five-year statute of limitation to pursue the claim at court. Provisions for payables are not deductible for tax purposes until their materialization.

**Tax Depreciation.** Tax depreciation of fixed assets is determined using the straight-line method. The law provides the following tax depreciation rates for categories of assets.

Category	Assets	Rate (%)
1	Buildings, facilities, communication devices, electricity carriers and communication lines	4
2	Machines, manufacturing equipment and other equipment	30 (a)
3	Transportation vehicles, excluding automobiles, road coverings and aircraft runways	10
4	Computers, software and the right to use software	50
5	Automobiles	25
6	Intangibles and other tangible assets that are legally protected for a limited time period	– (b)
7	Other tangible assets	15

(a) The rate may increase to as high as 50% for new machines for investment purposes.

(b) The depreciation rate is determined by dividing 100 by the number of years of the legal restriction. The maximum rate is  $33\frac{1}{3}\%$ .

The Corporate Income Taxation Act contains measures requiring companies to prepare tax depreciation plans.

Goodwill arising from business combinations is no longer treated as a depreciable asset for tax purposes.

**Relief for Losses.** Tax losses may be carried forward for five years. Losses may not be carried back.

**Groups of Companies.** Bulgarian law does not include measures for filing consolidated returns or relieving losses within a group.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; imposed on all domestic supplies of goods and services, imports and intra-EU acquisitions in Bulgaria	20
One-off tax on expenses; imposed on payers of fringe benefits and representation-related expenses; amount is not further subject to tax in the hands of the recipient	10
Real estate property tax; rate varies by municipality	1.5 to 3
Real estate transfer tax; rates varies by municipality	2 to 4

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Bulgarian currency is the leva (BGN). The exchange rate of the leva is fixed at BGN 1.95583 = €1.

Bulgaria does not impose foreign-exchange controls. However, some reporting requirements exist.

Each business transaction between local and foreign persons that involves financial credits or direct investment of a local company or sole proprietor abroad, must be declared for statistical purposes to the Bulgarian National Bank (BNB) within 15 days after the date of the transaction.

Under the act, bank payments of up to BGN 25,000 may be made freely after the payer declares the purpose of the payments. For payments over BGN 25,000, certain requirements must be satisfied, including the submission of certain documents to the bank.

The act does not restrict the amount of foreign currency that may be purchased or imported into Bulgaria. Bulgarian and foreign individuals may export foreign currency of up to the equivalent of €10,000 without filing a declaration. The individual must file a declaration for exports exceeding €10,000. For exports of cash exceeding €25,000 or the equivalent in another currency, the individual must provide to the customs authorities a certificate from the tax authorities stating that he or she has no outstanding tax liabilities.

**Debt to Equity Rules.** If the total of debts of a company to shareholders, third parties and banks from the debtor's group of companies and debts resulting from bank loans guaranteed by related parties exceeds three times the company's equity, the thin-capitalization restrictions on the deductibility of interest are triggered.

Under the thin-capitalization measures, the tax deductibility for interest expenses exceeding interest income is limited to 75% of the accounting profit before deducting the interest. If the financial result before deducting the interest is a loss, the entire amount of the interest expense is nondeductible.

The Bulgarian thin-capitalization rules allow for a five-year carryforward of the interest expenses that are nondeductible under the above rules. As a result, the add-back of the interest expense to taxable income may effectively be a timing difference.

**Hidden Distributions of Profit.** Adjustments to taxable income as a result of violations of arm's length principles are treated as hidden distributions of profit. Hidden distributions are treated like dividends and are accordingly subject to withholding tax.

## F. Treaty Withholding Tax Rates

The rates of withholding tax in Bulgaria's tax treaties are described in the following table.

	<b>Dividends (y)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Albania	5/15 (h)	10	10
Algeria	10	10	10
Armenia	5/10 (m)	10	10
Austria	0	0	0
Belarus	10	10	10
Belgium	10	10	5
Canada	10/15 (n)	10	10
China	10	10	7/10 (a)
Croatia	5	5	0
Cyprus	5/10 (r)	7	10
Czech Republic	10	10	10
Denmark	5/15 (b)	0	0
Egypt	10	12.5	12.5
Finland	10 (c)	0	0/5 (d)
France	5/15 (e)	0	5
Georgia	10	10	10
Germany	15	0	5
Greece	10	10	10
Hungary	10	10	10
India	15	15	15
Indonesia	15	10	10
Iran	7.5	5	5
Ireland	5/10 (r)	5	10
Israel	7.5	5/10 (u)	7.5
Italy	10	0	5
Japan	10/15 (f)	10	10
Kazakhstan	10	10	10
Kuwait	0/5 (v)	5	10
Latvia	5/10 (b)	5	5/7 (w)
Lebanon	5	7	5
Lithuania	0/10 (aa)	10	10
Luxembourg	5/15 (h)	10	5
Macedonia	5/15 (p)	10	10
Malta	0 (g)	0	10
Moldova	5/15 (h)	10	10
Mongolia	10	10	10
Morocco	7/10 (q)	10	10
Netherlands	5/15 (i)	0	0
North Korea	10	10	10
Norway	15	0	0
Poland	10	10	5
Portugal	15	10	10
Romania	10/15 (l)	15	15
Russian Federation	15	15	15
Singapore	5	5	5
Slovak Republic	10	10	10
Slovenia	5/10 (b)	5	5/10 (x)
South Africa	5/15 (h)	5	5/10 (z)
South Korea	5/10 (j)	10	5
Spain	5/15 (i)	0	0
Sweden	10	0	5
Switzerland	5/15 (h)	10	0
Syria	10	10	15
Thailand	10	10/15 (s)	5/15 (t)



	<b>Dividends (y)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Turkey	10/15 (o)	10	10
Ukraine	5/15 (i)	10	10
United Kingdom	10	0	0
Uzbekistan	10	10	10
Vietnam	15	10	15
Yugoslavia	5/15 (h)	10	10
Zimbabwe	10/15 (k)	10	10
Nontreaty countries	5	10	10

- (a) The 7% rate applies to royalties for the right to use industrial, commercial and scientific equipment; the 10% rate applies to other royalties.
- (b) The 5% rate applies if the beneficial owner is a company, other than a partnership, holding directly more than 25% of the capital of the payer.
- (c) This rate applies to dividends paid from Finland to Bulgaria. The treaty does not provide a withholding rate for dividends paid from Bulgaria to Finland.
- (d) The 5% rate applies to royalties for specified types of intellectual property. The rate for other royalties is 0%.
- (e) The 5% rate applies if the beneficial owner of the dividends is a company, other than a general partnership, that holds directly at least 15% of the capital of the payer; the 15% rate applies to other dividends.
- (f) The 10% rate applies if the recipient is a legal person owning at least 25% of the voting shares of the payer for at least six months before the end of the accounting period for which the distribution of profits is made. The 15% rate applies to other dividends.
- (g) The rate is 0% for dividends paid from Bulgaria to Malta. For dividends paid from Malta to Bulgaria, the withholding tax is the lower of 30% of the gross dividend or the tax imposed on the profits out of which the dividends are paid.
- (h) The 5% rate applies if the recipient is a company owning directly at least 25% of the capital of the payer; the 15% rate applies to other dividends.
- (i) The 5% rate applies if the recipient is a company, other than a general partnership, owning directly at least 25% of the payer. The 15% rate applies to other dividends.
- (j) The 5% rate applies if the recipient is a company that is the beneficial owner of the dividends and holds at least 15% of the capital of the payer. The 10% rate applies to other dividends.
- (k) The 10% rate applies if the beneficial owner of the dividends is a company that holds at least 25% of the capital of the payer. The 15% rate applies to other dividends.
- (l) The 10% rate applies if the beneficial owner of the dividends is a company that holds more than 25% of the capital of the payer. The 15% rate applies to other dividends.
- (m) The 5% rate applies if the beneficial owner of the dividends has invested at least US\$40,000 or the equivalent amount in another currency in the capital of the payer. The 10% rate applies to other dividends.
- (n) The rate of 10% applies to dividends paid by a Canadian investment company, of which at least 10% of the voting shares are controlled directly or indirectly by a foreign company. The 15% rate applies to other dividends.
- (o) The 10% rate applies if the beneficial owner of the dividends is a company, other than a general partnership, that holds at least 25% of the payer. The 15% rate applies to other dividends.
- (p) The 5% rate applies if the beneficial owner of the dividends is a company, other than a partnership, holding directly at least 25% of the payer. The 15% rate applies to other dividends.
- (q) The 7% rate applies if the beneficial owner of the dividends is a company, other than a partnership, holding directly at least 15% of the capital of the payer. The 10% rate applies to other dividends.
- (r) The 5% rate applies if the recipient is a company owning directly at least 25% of the payer. The 10% rate applies to other dividends.
- (s) The 10% rate applies to interest paid to financial institutions, including insurance companies. The 15% rate applies to other interest payments.
- (t) The 5% rate applies to royalties received for the use of, or the right to use, copyrights. The 15% rate applies to other royalties.
- (u) The 5% rate applies to interest on loans from banks or financial institutions. The 10% rate applies to other interest payments.
- (v) The 0% rate applies if the beneficial owner is a company, other than a partnership, holding directly more than 25% of the capital of the payer.

- (w) The 7% rate applies to royalties received for the use of, or the right to use, copyrights, patents, logos, models, plans, secret formulas or processes. The 5% rate applies to other royalties.
- (x) The 5% rate applies to royalties received for the use of, or the right to use, copyrights (except for cinematographic movies), or scientific, commercial or industrial equipment. The 10% rate applies to other royalties.
- (y) A 0% rate applies to dividends paid to entities from European Union (EU) countries if certain conditions are satisfied.
- (z) The 5% rate applies to copyright royalties and other similar payments with respect to the production or reproduction of cultural, dramatic, musical or other artistic works (but not including royalties with respect to motion picture films and works on film or videotape or other means of reproduction for use in connection with television) and to royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (aa) The 0% rate applies if the beneficial owner of the dividends is a company, other than a general partnership, that holds at least 10% of the payer. The 10% rate applies to other dividends.

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## CAMEROON

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### A. At a glance

Corporate Income Tax Rate (%)	38.5 (a)
Capital Gains Tax Rate (%)	38.5 (b)
Branch Tax Rate (%)	38.5 (a)(c)
Withholding Tax (%)	
Dividends	16.5 (d)(e)
Interest	16.5 (f)
Royalties from Patents, Know-how, etc.	15
Fees for Technical Services and Professional Activities	15 (g)
Branch Remittance Tax	16.5
Net Operating Losses (Years)	
Carryback	0
Carryforward	4

- (a) The minimum tax is generally 1.1% or 1.65% of turnover. For further details, see Section B.
- (b) In certain circumstances, the tax is deferred or reduced (see Section B).
- (c) If an election is made, the tax for CIE Petroleum Contractors (foreign companies without a permanent establishment in Cameroon that have contracted with petroleum companies established in Cameroon) is 15% of turnover.
- (d) Also applies to directors' fees, nondeductible expenses and adjustments of profits following a tax examination.
- (e) Applicable to residents and nonresidents.
- (f) Interest on savings up to FCFA 10 million is exempt from withholding tax.
- (g) Applicable to nonresidents.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Cameroonesse companies are taxed on the territoriality principle. As a result, Cameroonesse companies carrying on a trade or business outside Cameroon are not taxed in Cameroon on their foreign-source profits. Cameroonesse companies are those registered in Cameroon, regardless of the nationalities of their shareholders or where they are managed and controlled.

Foreign companies with activities in Cameroon are subject to Cameroonesse corporate tax on Cameroonesse-source profits.

**Tax Rates.** The regular corporate income tax rate is 38.5% (35% plus a 10% council surtax). In general, the minimum tax payable is 1.1% (1% plus the 10% surtax) of annual gross sales (turnover) for the preceding fiscal year. The minimum tax payable is increased to 1.65% for companies under the basic tax regime. The minimum tax is creditable against corporate tax due for the current financial year.

Profits realized in Cameroon by branches of foreign companies are presumed to be distributed and are therefore subject to a branch withholding tax of 16.5% on after-tax income. This rate is subject to reduction by treaty.

Manufacturers, wholesale dealers, forestry farms and importers must add a 1% or 1.5% tax to their bills for sales to retail merchants, depending on whether they are under the basic tax regime. The rate is 0.5% for purchases made by gas-station owners and exporters from their suppliers. This tax is imposed on the sales price before the addition of the tax. Retail merchants, gas-station owners and exporters may credit the tax against their corporate income tax. Companies that do not possess a taxpayer identification card are subject to a 5% tax instead of the 0.5%, 1% and 1.5% taxes described above.

Corporations may apply for various categories of priority status and corresponding tax exemptions. The priority status varies depending on the nature of the project and the level of investments.

**Capital Gains.** Capital gains are taxed at the regular corporate rate. Capital gains include gains on the sale of real estate, corporate shares and business assets. The tax, however, can be deferred or eliminated in the event of a merger.

If the business is totally or partially transferred or discontinued (such as in the event of a merger, liquidation or sale of the business), only one-half of the net capital gains is taxed if the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gains is taxed if the event occurs five years or more after the business is begun or purchased.

**Administration.** The fiscal year is 1 January to 31 December.

Companies must file income tax returns by 15 March of the year following the fiscal year. Late returns are subject to a penalty of 1.5% a month, up to a maximum of 50% of the tax due. Corporate income tax must be paid by the deadline for filing tax returns. Late payments are subject to interest at a rate of 1.5% per month of delay, up to a maximum of 50% of the tax due.

The minimum tax is paid in accordance with the same rules applicable to the payment of corporate income tax. Manufacturers, wholesale dealers, forestry farms, importers, and suppliers of gas-station owners and exporters must pay to the tax authorities the tax on purchases by the 15th day of the month following the month of the purchase (for further details concerning these taxes, see *Tax Rates* above).

**Dividends.** Dividends paid to residents in Cameroon are subject to a 16.5% withholding tax (15% plus the 10% council surtax). Resident recipients must include the gross dividend in taxable income, but they receive a corresponding 16.5% tax credit to prevent double taxation. Dividends paid to nonresidents are subject to a 16.5% withholding tax, which is a final tax.

A parent corporation may exclude up to 90% of the dividends received from a 25%-owned subsidiary if the parent company and the subsidiary have their registered office in a Central African Economic and Monetary Community (CEMAC) country (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon). In this case, however, no withholding tax credit is allowed. Instead, the tax can be offset against any withholding tax due on its own dividend distributions.

**Foreign Tax Relief.** In general, foreign tax credits are not allowed; income of residents and nonresidents subject to foreign tax that is not exempt from Cameroones tax under the territoriality principle is taxable, net of the foreign tax. The French tax treaty, however, provides a tax credit that corresponds to withholding tax on passive income.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the OHADA (organization for the harmonization of business law in French-speaking Africa) standard statements.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Head office overhead, research costs and technical, financial and administrative assistance fees paid to nonresidents, which exceed the following:
  - 10% of taxable profits before their deduction; or
  - 5% of turnover for public works projects or 15% of turnover for engineering services;
- Royalties from patents, brands, models or designs paid to a non-CEMAC corporation participating directly or indirectly in the management of, or owning shares in, the Cameroones corporation;
- Rent expense for movable equipment paid to a shareholder that manages the company in fact or by right and holds, directly or indirectly, more than 10% of the capital;
- Interest paid to shareholders in excess of the central bank annual rate plus two points;
- Commissions and brokerage fees exceeding 5% of purchased imports;
- Amounts set aside for self-insurance; and
- Certain specific charges (such as contributions other than those for retirement paid to a foreign social security organization), gifts, subsidies and penalties.

**Inventories.** Inventory is normally valued at the acquisition cost or at the lower of cost or market value. Cost must be determined on a weighted-average cost-price method. The first-in, first-out (FIFO) method is also generally acceptable.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by tax law.

**Relief for Tax Losses.** Losses may be carried forward for four years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** Cameroonian law does not provide for the fiscal integration of Cameroonian companies equivalent to a consolidated filing position.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on transactions carried out in Cameroon; certain transactions are exempt	
Standard rate	19.25
Exports	0
Business license; rate varies depending on the amount of turnover	Various
Radio-television tax, equal to the business license; payable by companies subject to the business license	Various
Registration duties, on transfers of real property or businesses	4 to 15
Payroll taxes, paid by employer	2.5
Social security contributions on an employee's annual gross salary, limited to FCFA 3.6 million	
Family allowances, paid by employer	3.7 to 7
Old age, disability and survivor's pension; paid by	
Employer	4.2
Employee	2.8
Social security contributions on an employee's annual gross salary for job-related accidents and diseases; paid by employer	1.75 to 5

#### E. Foreign-Exchange Controls

Exchange control regulations exist in Cameroon for financial transfers outside the franc zone, which is the monetary zone including France and its former overseas colonies. A CEMAC rule (No. 0200/CEMAC/UMAC/CM, dated 29 April 2000) applies to all of the CEMAC countries.

**F. Treaty Withholding Tax Rates**

	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties %</b>
Canada	15/20 (a)	15/20 (a)	15/20 (a)
Central African Republic	– (c)	16.5 (b)	– (d)
Chad	– (c)	16.5 (b)	– (d)
Congo	– (c)	16.5 (b)	– (d)
Equatorial Guinea	– (c)	16.5 (b)	– (d)
France	15	16.5 (b)	7.5/15 (e)
Gabon	– (c)	16.5 (b)	– (d)
Tunisia (g)	12	15	15
Nontreaty countries	16.5	16.5 (f)	15

- (a) The 15% rate applies to payments from a Cameroonesse source. The 20% rate applies to payments from a Canadian source.
- (b) If from a Cameroonesse source, the payments are subject to withholding tax under Cameroonesse domestic tax law. See Section A.
- (c) Withholding rates are determined under the domestic tax law of the state of domicile of the payer.
- (d) Withholding tax is not imposed. The income is subject to tax in the state of the recipient.
- (e) The 7.5% rate applies to payments for financial services, accounting services and technical assistance. The 15% rate applies to other royalties.
- (f) See footnote (f) to Section A.
- (g) This treaty enters into force on 1 January 2008.

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**A. At a Glance**

Corporate Income Tax Rate (%)	20.50 (a)
Capital Gains Tax Rate (%)	10.25 (a)(b)
Branch Tax Rate (%)	20.50 (a)
Withholding Tax (%)	
Dividends	25 (c)
Interest	0/25 (d)
Royalties from Patents, Know-how, etc.	25 (c)
Branch Remittance Tax	25 (e)
Net Operating Losses (Years)	
Carryback	3
Carryforward	20

- (a) These 2008 rates are applied to income that is not eligible for the manufacturing and processing deduction or the small business deduction. The calculation of the rate is discussed in Section B. Additional tax is levied by the provinces and territories of Canada, and the combined federal and provincial or territorial rates may vary from approximately 30.50% to 36.50%.
- (b) 50% of capital gains is subject to tax.
- (c) Final tax applicable only to nonresidents. This rate may be reduced by a tax treaty (see Section F).

- (d) Under a recently enacted law, effective for interest paid or credited on or after 1 January 2008, in general, no withholding tax is imposed on interest paid to payees who are dealing at arm's length with the payer. However, withholding tax at a rate of 25% typically applies to interest paid or credited to related nonresidents. Other specific exemptions or specific inclusions may apply to change the general rules noted above.
- (e) This tax is imposed in addition to the regular corporate income tax. For details, see Section B. The rate may be reduced by a tax treaty.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporations resident in Canada (whether owned by Canadians or nonresidents) are taxed on their worldwide income from all sources, including income from business or property and net taxable capital gains. Nonresident corporations are taxed only on certain Canadian-source income. In general, a corporation is deemed to be resident in Canada if it is incorporated in Canada or has its central mind and management located there.

If a tax treaty exists between Canada and the country in which a nonresident corporation is resident, the determination of whether a nonresident is taxable in Canada may be restricted or modified, and lower rates may apply. In general, Canada's tax treaties provide that a nonresident that is resident in a treaty country is subject to Canadian tax on income derived from carrying on business in Canada only if the nonresident has a Canadian permanent establishment.

**Rates of Income Tax.** Corporations are taxed by the federal government and by one or more provinces or territories. The basic rate of federal corporate tax for 2008 is 30.50%, but it is reduced to 20.50% by an abatement of 10 percentage points on a corporation's taxable income earned in a province or territory. A previously imposed surtax of 1.12% is eliminated, effective from 1 January 2008. Provincial and territorial tax rates are added to the federal tax and generally vary between 10% and 16% of taxable income.

The federal government and the provincial and territorial governments may apply lower rates of tax to active small business earnings and earnings derived from manufacturing and processing.

Nonresident corporations carrying on business in Canada through a branch are taxable at the full corporate rate on their net business income earned in Canada, and they must pay an additional tax of 25% on after-tax income, subject to an allowance for investment in Canadian property. This branch tax may be reduced by treaty.

**Capital Gains and Losses.** The taxable portion of capital gains and the deductible portion of capital losses is 50%. See Section E for details concerning the taxation of capital gains of nonresidents.

The deductible portion of capital losses (other than allowable business investment losses) in excess of taxable capital gains is termed "net capital loss" and may be carried back three years and carried forward indefinitely, but may be applied only against taxable capital gains.

Proceeds from the disposition of capital property that exceed the tax cost of such property are generally taxed as capital gains. For depreciable property, tax depreciation previously claimed that is recovered on disposition is generally fully included in income.

If control of a corporation is acquired by a person or group of persons, net capital losses incurred before the change of control cannot be deducted in a year after the acquisition of control. Also, the carryback of capital losses to years prior to such change of control is prohibited. A flowthrough of net capital losses is provided for on certain amalgamations and liquidations.

If a sale of what might otherwise be capital property is regarded as a sale in the course of a taxpayer's business (such as dealers in real estate, securities or art) or as an undertaking in the nature of normal trading, any resulting gain or loss is fully taxable or deductible.

**Administration.** A corporation's tax year usually ends on the same date as the financial statement year-end. If an acquisition of control occurs, the corporation is deemed to have a tax year ending immediately before the change of control.

Corporate income tax returns are required to be filed within six months following a corporation's tax year-end. Nonresident corporations must file a Canadian income tax return if they carry on business in Canada or dispose of taxable Canadian property during the tax year. Nonresident corporations claiming relief from Canadian tax under a tax treaty with another country must disclose detailed information regarding their activities in Canada.

A penalty is levied on returns that are filed late, equal to 5% of the unpaid tax at the required filing date, plus an additional 1% per month (not exceeding 12 months) of such unpaid tax for each month that the return remains unfiled. Repeat offenders may be liable for additional penalties. Nonresident corporations that carry on business in Canada or dispose of taxable Canadian property during the tax year may be subject to another penalty of up to C\$2,500 even if no tax is payable.

Federal and provincial corporate tax installments must be made monthly during the corporation's tax year. The remaining balance of taxes owed must be paid by the end of the second month following the tax year-end (third month for Canadian-controlled private corporations that carry on an active business and claim a small business deduction).

Interest is charged on late or deficient tax payments based on the prescribed rate. The prescribed rate can vary each quarter. A penalty may apply to late or deficient tax installments.

**Dividends.** In general, dividends received by one Canadian corporation from another are fully deductible. However, to prevent the use of private companies to obtain significant tax deferrals on portfolio dividend income, such corporations are subject to a special 33 $\frac{1}{3}$ % refundable tax on dividends received from portfolio investments. Additional taxes may be imposed on dividends paid on certain preference-type shares.

Dividends paid by a Canadian company to a Canadian resident individual are generally taxable, but the individual also receives a tax credit because the income has already been taxed within the corporation. A dividend from a foreign affiliate may be exempt from tax (see Section E).

**Foreign Tax Relief.** In general, taxpayers resident in Canada may deduct from their Canadian tax liability a credit for income or profits tax and for withholding tax paid to another country. The foreign tax credit is calculated separately for foreign business tax and foreign nonbusiness tax on a country-by-country basis.

If a Canadian company receives dividends from a foreign affiliate, the normal foreign tax credits are replaced by either a complete or partial deduction for such dividends (see Section E).

### C. Determination of Taxable Income

**General.** Taxable profits are computed in accordance with generally accepted commercial principles, modified by certain statutory provisions in the Canadian Income Tax Act.

In general, only 50% of meal and entertainment expenses are deductible for income tax purposes.

**Inventories.** For tax purposes, inventories may be valued at the lower of cost or fair market value or at fair market value. The last-in, first-out (LIFO) basis is not permitted for tax purposes, despite its acceptability for accounting purposes in certain instances. Corporations may use a different inventory valuation method for tax purposes than the one used for accounting purposes.

**Provisions.** In general, provisions, such as warranty reserves, are not deductible for income tax purposes. Only actual expenses incurred are tax-deductible.

**Depreciation and Amortization.** Depreciation or amortization included in financial statements is added back, and tax depreciation, generally calculated on a declining-balance basis at prescribed rates, beginning when the asset is available for use, is deducted for tax purposes. The deduction is generally limited in the first year the asset is available for use. Tax depreciation may be fully or partially claimed at the taxpayer's option.

The following are the depreciation rates under the declining-balance method for major categories of assets.

Asset	Rate (%)
Commercial and industrial buildings	4
Office equipment	20
Motor vehicles	30
Plant and machinery	20*

\* For plant and machinery used in manufacturing and processing, the rate is 30%.

Capital assets are generally pooled into various classes, but, in certain cases, a corporation may elect to include individual pieces of certain types of equipment in separate classes. In general, if an asset is disposed of, the balance of the assets in the class is reduced by the proceeds from the disposition. However, if the asset is the only asset in the class and if the proceeds from the disposition exceed the tax value of the class after depreciation, the excess is recaptured and is subject to tax at the regular corporate tax rates. If the asset is the only asset in the class and if a balance remains after the proceeds are charged to the class, the balance may be deducted as a terminal loss.

**Groups of Companies.** Canada does not allow consolidated tax reporting for related companies and does not provide relief for group losses.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Goods and Services Tax (GST), a value-added tax, applies to a broad range of goods and services	6
Harmonized Sales Tax, a value-added tax, applies to a broad range of goods and services in certain provinces	14
Part VI tax on financial institutions, effectively a minimum tax, which is reduced by income taxes paid; applies on a nonconsolidated basis to capital in excess of C\$200 million	1.25
Provincial/territorial income taxes, on taxable income allocated to jurisdictions in which corporations have permanent establishments	10 to 16
Provincial/territorial capital taxes, with capital allocated in the same manner as income for the provincial/territorial income tax; these taxes do not apply to insurers, which instead pay premium taxes at various rates	Up to 0.3
Provincial payroll taxes, paid by employers	0 to 4.3
Provincial payroll taxes varies by province; paid by employers (2007 rates; at the time of printing, the 2008 rates had not yet been published)	0 to 4.3
Canada Pension Plan, on pensionable earnings between C\$3,500 and C\$44,900 (2007 rates; at the time of writing, the 2008 rates had not yet been published)	
Employer	4.95
Employee	4.95
Self-employed individual	9.9
(The Province of Quebec offers a similar plan for residents of Quebec.)	
Employment insurance, on insurable earnings up to a maximum of C\$39,000 (2007 rates; at the time of writing, the 2008 rates had not yet been published)	
Employee	1.73
Employer (1.4 times the employee rate)	2.42

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Canada does not impose foreign-exchange control restrictions.

**Debt-to-Equity Rules.** Canada imposes a thin-capitalization rule limiting the ability of nonresidents to withdraw profits through deductible interest charges. In general, these rules restrict the deductibility of interest paid or payable by a Canadian resident corporation to a specified nonresident on debts exceeding two times

“equity.” A specified nonresident is a nonresident shareholder who, either alone or together with persons with whom the shareholder does not deal at arm’s length, owns sufficient shares that satisfy either of the following conditions:

- They give the shareholder 25% or more of the votes that could be cast at an annual meeting of shareholders; or
- They have a fair market value representing 25% or more of the fair market value of all outstanding shares of the corporation.

**Foreign Affiliates.** A nonresident corporation is considered a foreign affiliate of a Canadian corporation if the Canadian corporation directly or indirectly owns at least 1% of any class of shares of the nonresident corporation and if the Canadian corporation and related persons directly or indirectly own at least 10% of any class of shares of that nonresident corporation. Dividends received by a Canadian corporation from a foreign affiliate are fully deductible in Canada if the dividends are derived from active business profits earned in a country with which Canada has entered into a tax treaty. Dividends are taxable in Canada if they are derived from passive operations or any operations in a nontreaty country, with relief for foreign tax on such income.

**Passive Income of Controlled Foreign Affiliates.** Any Canadian taxpayer that controls (as defined) a foreign affiliate is taxed on its share of that entity’s passive investment income in the year such income is earned, regardless of whether such income is currently paid to the shareholder, except in certain specified circumstances.

**Foreign Investment Entities.** Proposed rules (generally referred to as the foreign investment entity [FIE] rules) that have been announced will apply to certain interests in certain nonresident entities. The FIE regime is intended to address the Canadian government’s concern that Canadian taxpayers are able to earn passive investment income offshore free of Canadian tax or to obtain a deferral of the Canadian tax that would otherwise have been payable had the income been earned in Canada. At the time of writing, the proposals had not been enacted, but are expected to apply to tax years beginning after 2006. When enacted, the FIE rules may subject taxpayers to Canadian tax with respect to certain investments in nonresident entities on a current basis. In general, taxpayers will be required to include in taxable income one of the following:

- An imputed amount based on the designated cost of the investment (generally the default mechanism);
- An amount computed by reference to the annual increase or decrease in the fair market value of the investment, depending on the type of investment (taxpayers may generally elect to use this mechanism if certain conditions are met); or
- The taxpayer’s share of the income of the FIE, generally computed based on generally accepted accounting principles (GAAP), but excluding unrealized gains or losses (taxpayers may generally elect to use this mechanism if certain conditions are met).

**Corporate Reorganizations.** In general, transactions between related corporations must be recognized at fair market value. However, some common types of domestic and foreign corporate reorganizations may be accomplished with little or no immediate Canadian tax cost.

**Antiavoidance Legislation.** The Canada Revenue Agency (CRA) may apply a general antiavoidance rule to challenge transactions that it perceives to be abusive. This rule does not apply to a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain a tax benefit. The application of the rule may cause certain transactions to be ignored or recharacterized.

**Transfer Pricing.** Under Canada's transfer-pricing rules, acceptable transfer-pricing methods are those recommended by the Organization for Economic Cooperation and Development (OECD). These methods include comparable uncontrolled price, resale price and cost-plus. Other methods may be used if the result obtained is similar to the result that would be obtained from an arm's length transaction. It is possible to enter into advance-pricing agreements with the CRA.

**Acquisition of Control Considerations.** If control of a corporation has been acquired, the target corporation is deemed to have a year-end immediately before the acquisition of control. A new tax year begins immediately thereafter, and a new year-end may be selected by the target corporation. Special rules apply to the determination and treatment of capital losses and business losses when an acquisition of control occurs.

**Capital Gains Realized by Nonresidents.** Subject to applicable tax treaties, nonresidents are required to pay Canadian tax on their net taxable capital gains arising on the disposition of taxable Canadian property. Such property includes the following: real property located in Canada; shares of Canadian private corporations; shares of Canadian public corporations (in limited circumstances); property used in a business carried on by the nonresident in Canada; an interest in a partnership if more than 50% of the value of the partnership's property was attributable to taxable Canadian property at any time in the 60 months preceding the disposition; interests in certain trusts resident in Canada; and shares of a nonresident corporation or an interest in a nonresident trust if at any time in the 60 months preceding the disposition, more than 50% of the value of the interest and the value of the property owned by the nonresident corporation or nonresident trust was attributable to certain types of property.

A nonresident vendor of taxable Canadian property (other than property that qualifies as excluded property) must obtain a tax clearance certificate from the CRA and provide acceptable security or must pay tax on the disposition at the time of sale. Unless the purchaser had no reason to believe that the vendor was a nonresident after reasonable inquiry, the purchaser must generally withhold and pay to the federal government up to 25% (50% in certain circumstances) of the amount by which the cost of the property exceeds the amount stipulated in the CRA clearance certificate. Similar requirements apply for the province of Quebec.

## **F. Treaty Withholding Tax Rates**

As noted in Section A, in general, withholding tax is not imposed on interest paid or credited on or after 1 January 2008 to arm's length nonresident persons. In addition, withholding tax does not

apply to interest that is considered “fully exempt interest,” regardless of the recipient’s relationship to the payer. “Fully exempt interest” generally includes the following: interest paid by a government body or crown corporation; interest on a mortgage or hypothecary with respect to real property located outside of Canada (certain conditions apply); interest paid to a prescribed international institution or agency; and deemed interest amounts pertaining to securities lending arrangements (certain conditions apply). However, regardless of the above general rules, a 25% withholding tax applies to all “participating debt interest.” “Participating debt interest” is generally interest, other than fully exempt interest, which satisfies either of the following conditions: it is paid or payable on an obligation, other than a prescribed obligation, and all or any portion of the interest is contingent or dependent on the use of or production from property in Canada; or it is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation.

The rates in the following table generally reflect the lower of the treaty rate and the rate under domestic tax law for dividends, interest and royalties paid from Canada to residents of various treaty countries. Certain exceptions or conditions may apply, depending on the terms of the particular treaty.

<b>Residence of Recipient</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties (b)(c) %</b>
Algeria	15	15/0	15/0 (ii)
Argentina	15/10 (qq)	12.5/0	15/10/5/3 (sss)
Armenia	15/5 (oo)	10/0	10 (eee)
Australia	15/5 (rr)	10/0	10
Austria	15/5 (r)	10/0	10/0
Azerbaijan	15/10 (ggg)	10/0	10/5 (hhh)
Bangladesh	15	15	10
Barbados	15	15	10
Belgium	5/15 (uu)	10/0	10/0 (rrr)
Brazil	25/15 (ooo)	15/0	25/15 (ttt)
Bulgaria	15/10 (ee)	10/0	10/0
Cameroon	15	15/0	15
Chile	15/10 (u)	15/0	10
China	15/10 (uuu)	10/0	10
Côte d’Ivoire	15	15/0	10
Croatia	15/5 (w)	10/0	10
Cyprus	15	15/0	10/0 (vvv)
Czech Republic	15/5 (d)	10/0	10
Denmark	15/5 (q)	10/0	10/0 (g)
Dominican Republic	18	18/0	18
Ecuador	15/5 (mm)	15/0	15/10 (aaa)
Egypt	15	25/15 (f)	15
Estonia	15/5 (x)	10/0	10
Finland	15/5 (n)	10/0	10/0 (vvv)
France	15/5 (m)	10/0	10/0 (g)
Gabon (cc)	15	10/0	10
Germany	15/5 (ll)	10/0	10/0 (p)
Guyana	15	15/0	10
Hungary	15/5 (aa)	10/0	10/0 (vvv)



<b>Residence of Recipient</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties (b)(c) %</b>
Iceland	15/5 (r)	10/0	10/0 (jj)
India	25/15 (www)	15/0	20/15/10 (o)
Indonesia	15/10 (z)	10/0	10
Ireland	15/5 (nnn)	10/0	10/0 (jjj)
Israel	15	15/0	15/0 (vvv)
Italy (ww)	15	15/0	10/0 (vvv)
Jamaica	15	15/0	10
Japan	15/5 (dd)	10/0	10
Jordan	15/10 (t)	10/0	10
Kazakhstan	15/5 (r)	10/0	10
Kenya	25/15 (xxx)	15/0	15
Korea	15/5 (yy)	10/0	10
Kuwait	15/5 (ss)	10/0	10
Kyrgyzstan	15	15/0	10/0 (y)
Latvia	15/5 (x)	10/0	10
Lebanon (ff)	15/5	10/0	10/5
Lithuania	15/5 (x)	10/0	10
Luxembourg	15/5 (aa)	10/0	10/0 (jj)
Malaysia	15	15/0	15
Malta	15	15/0	15
Mexico	15/5 (n)	10/0	10/0 (cc)
Moldova	5/15 (zz)	10/0	10
Mongolia	15/5 (vv)	10/0	10/5 (jj)
Morocco	15	15/0	10/5 (yyy)
Netherlands	15/5 (kk)	10/0	10/0 (g)
New Zealand	15	15/0	15
Nigeria	15/12.5 (v)	12.5/0	12.5
Norway	15/5 (xx)	10/0	10/0 (lll)
Oman	15/5 (oo)	10/0	10/0 (eee)
Pakistan	15	25/0	15
Papua New Guinea	15	10/0	10
Peru	15/10 (nn)	15/0	15
Philippines	15	15/0	10
Poland	15	15/0	10
Portugal	15/10 (gg)	10/0	10/0 (vvv)
Romania	15/5 (mmm)	10/0	10/5 (iii)
Russian Federation	15/10 (uuu)	10/0	10/0 (p)
Senegal	15	15/0	15
Singapore	15	15/0	15
Slovak Republic	15/5 (tt)	10/0	10/0 (vvv)
Slovenia	15/5 (pp)	10/0	10
South Africa	15/5 (pp)	10/0	10/6 (l)
Spain	15	15/0	10/0 (vvv)
Sri Lanka	15	15/0	10/0 (vvv)
Sweden	15/5 (bb)	10/0	10/0 (jj)
Switzerland	15/5 (n)	10/0	10/0 (jj)
Tanzania	25/20 (zzz)	15/0	20
Thailand	15	15/0	15/5 (yyy)
Trinidad and Tobago	15/5 (r)	10/0	10/0 (vvv)
Tunisia	15	15/0	20/15 (aaaa)
Ukraine	15/5 (j)	10/0	10 (a)
USSR (e)	15	15/0	10/0 (vvv)
United Arab Emirates	15/5 (bbb)	10/0	10/0 (kkk)

<b>Residence of Recipient</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties (b)(c) %</b>
United Kingdom	15/5 (ddd)	10/0	10/0 (fff)
United States	15/5 (h)	10/0 (i)	10/0 (p)
Uzbekistan	15/5 (hh)	10/0	10/5 (jj)
Venezuela	15/10 (ppp)	10/0	10/5 (qqq)
Vietnam	15/10/5 (s)	10/0	10/7.5 (bbbb)
Zambia	15	15	15
Zimbabwe	15/10 (u)	15/0	10
Nontreaty countries	25	25 (j)	25 (k)

- (a) The 0% rate generally applies to royalties relating to computer software.
- (b) The lower rate usually applies to royalties on cultural works or to royalties relating to computer software, patents and know-how.
- (c) Withholding tax of 25% applies if the royalties relate to the use of real or immovable property, including resource property.
- (d) The treaty provides that the lower rate applies to dividends paid to a company that controls directly or indirectly at least 10% of the voting power in the payer. Interest on certain government-assisted debt and certain other categories of interest are exempt from withholding tax.
- (e) Belarus is honoring the USSR treaty, and consequently that treaty continues to be in force with respect to Belarus. Canada has entered into tax treaties with Estonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Russian Federation, Ukraine and Uzbekistan. Canada has signed tax treaties with Azerbaijan and Armenia, but these treaties have not yet been ratified. The withholding rates under these treaties are listed in the above table. Tajikistan and Turkmenistan have announced that they are not honoring the USSR treaty, but negotiations for new treaties with these countries have not yet begun.
- (f) Mortgage interest on Egyptian property is not eligible for reduced rates under the treaty. As a result, the higher rate applies if such interest is not exempt under Canadian domestic law.
- (g) The 0% rate applies to certain copyright royalties and to royalties for the use of, or the right to use, computer software, patents or information concerning industrial, commercial or scientific experience. The 10% rate applies to other royalties.
- (h) The 5% rate applies to dividends paid to corporate shareholders owning at least 10% of the voting shares of the Canadian company. The 15% rate applies to other dividends.
- (i) On 21 September 2007, Canada and the United States jointly released the fifth protocol revising their 1980 tax treaty. The protocol generally calls for a gradual reduction to the rate of withholding tax on interest paid or credited to U.S. residents. This change will become effective on the first day of the second month following the date of ratification. Assuming ratification occurs in the 2008 calendar year, the following withholding tax rates will apply:
- 10% for interest paid during the 2007 calendar year and the portion of 2008 before the general rate reduction takes effect;
  - 7% for interest paid during the balance of the 2008 calendar year;
  - 4% for interest paid during the 2009 calendar year; and
  - 0% for interest paid after the 2009 calendar year.
- Comments by the Canadian authorities suggest that the reduced rates may retroactively apply for the entire calendar year in which the protocol was ratified (that is, effective for interest paid as early as 1 January 2008). However, until further information becomes available, it may be advisable to withhold at the full 10% rate at the time of payment, and consider seeking a refund at a later date, if applicable. In addition, as noted in Section A, recently enacted changes to Canada's domestic law eliminate withholding taxes on interest paid or credited to arm's-length nonresidents after the 2007 calendar year.
- (j) The 5% rate applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 20% of the voting power in the payer.
- (k) Most copyright royalties are exempt from withholding tax.
- (l) The 6% rate applies to royalties paid on cultural works, copyrights, computer software, patents and certain types of information.
- (m) The 5% rate applies if the dividends are paid by a Canadian corporation to a French corporation that controls directly or indirectly at least 10% of the votes of the payer.
- (n) The 5% rate applies to dividends paid to corporations owning at least 10% of the voting shares and capital of the payer. The 15% rate applies to other dividends.

- (o) The general rate is 15%, and payments for the use of, or the right to use, certain industrial, commercial or scientific equipment may qualify for a 10% rate.
- (p) The 0% rate applies to royalties on cultural works as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience.
- (q) The 5% rate applies if the beneficial owner of the dividends is a corporation that holds directly at least 25% of the capital of the payer.
- (r) The 5% rate applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 10% of the voting power of the payer.
- (s) The 5% rate applies if the beneficial owner of the dividends controls at least 70% of the voting power of the payer. The 10% rate applies if the beneficial owner of the dividends controls at least 25% but less than 70% of the voting power of the payer.
- (t) The 10% rate applies if the recipient of the dividends is a company that controls directly or indirectly at least 10% of the voting power of the payer.
- (u) The 10% rate applies if the beneficial owner of the dividends is a corporation that controls directly or indirectly at least 25% of the voting power of the payer.
- (v) The 12.5% rate applies if the recipient is a company that controls directly or indirectly at least 10% of the votes of the payer.
- (w) The 5% rate applies to dividends paid to a resident of Croatia that controls at least 10% of the voting power of the payer or that holds at least 25% of the capital of the payer.
- (x) The 5% rate applies if the beneficial corporate owner of the dividends controls directly at least 25% of the voting power of the payer of the dividends.
- (y) The 0% rate generally applies to royalties for certain cultural works and copyrights. It also applies to royalties for computer software, patents and information concerning industrial, commercial and scientific experience, if the payer and recipient are not associated persons (as defined).
- (z) The 10% rate applies to dividends paid to a company holding at least 25% of the capital of the payer.
- (aa) The 5% rate applies if the recipient of the dividends controls directly or indirectly at least 10% of the voting power of the payer.
- (bb) The 5% rate applies if the beneficial owner of the dividends is a corporation that controls directly at least 10% of the voting power of the payer or that holds directly at least 25% of the capital of the payer. The 15% rate applies to other dividends.
- (cc) The 0% rate applies to copyright royalties and similar payments with respect to cultural, dramatic, musical or other artistic works.
- (dd) The 5% rate applies to dividends paid to a company that owns at least 25% of the voting shares of the payer for the last six months of the accounting period for which the distribution of profits takes place.
- (ee) The 10% rate applies if the recipient is a company that controls at least 10% of the votes of the payer.
- (ff) The treaty was signed on 29 December 1998, but it is not yet in force. The 5% rate for dividends will apply if the recipient is a company that controls at least 10% of the votes of the payer. The 5% rate for royalties will apply to royalties for certain cultural works, and royalties for certain computer software, patents and know-how if the payer and the payee are not related.
- (gg) The 10% rate applies if the recipient is a company that controls at least 25% of the voting power of the payer directly or indirectly.
- (hh) The 5% rate applies if the recipient is a company that controls at least 10% of the voting power in the payer.
- (ii) The 0% rate generally applies to royalties relating to computer software or patents.
- (jj) The lower rate applies to royalties for certain cultural works, and generally to royalties for computer software, patents and know-how.
- (kk) The 5% rate applies if the beneficial owner of the dividends owns at least 25% of the capital or controls, directly or indirectly, 10% of the voting power of the payer. The 15% rate applies to other dividends.
- (ll) The 5% rate applies to dividends if the beneficial owner of the dividends is a company that controls at least 10% of the voting power in the payer.
- (mm) The 5% rate applies if the recipient is a company that controls directly or indirectly at least 25% of the voting power of the payer.
- (nn) The 10% rate applies if the recipient is a company that controls directly or indirectly at least 10% of the voting power of the payer.
- (oo) The 5% rate applies if the recipient is a company holding directly at least 25% of the capital of the payer.
- (pp) The 5% rate for dividends applies if the recipient is a company that controls directly or indirectly at least 10% of the voting power in the payer.

- (qq) The 10% rate applies if the recipient of the dividends is a company that holds directly 25% of the capital of the payer.
- (rr) The 5% rate applies to dividends if the beneficial owner of the dividends is a company that controls at least 10% of the voting power in the payer.
- (ss) The 5% rate applies if the recipient of the dividends is a company that owns at least 10% of the voting shares, or at least 25% of the value of the shares, of the payer.
- (tt) The 5% rate applies if the dividends are paid to a company that controls at least 10% of the voting power in the payer.
- (uu) The 5% rate applies to dividends if the beneficial owner of the dividends is a company that owns directly at least 10% of the voting shares of the payer. The 15% rate applies to other dividends.
- (vv) The 5% rate for dividends applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 10% of the voting power in the payer.
- (ww) A new treaty was signed on 3 June 2002, but it is not yet in force. The withholding tax rates under the existing treaty are shown in the table. Under the proposed treaty, a 5% rate will apply to dividends if the beneficial owner of the dividends is a company that controls at least 10% of the voting power in the payer. A 15% rate will apply to other dividends. A 10% rate will apply to interest. Interest on certain government or government-assisted debt will be exempt from withholding tax. The general withholding tax rate for royalties will be 10%. A 5% rate will apply to certain royalties pertaining to computer software and information concerning industrial, commercial or scientific experience. An exemption applies to certain copyright royalties.
- (xx) The 5% rate applies to dividends if the beneficial owner is a company that holds directly at least 10% of the voting power in the company paying the dividends.
- (yy) The 5% rate applies to dividends paid to a company that is a beneficial owner and directly holds at least 25% of the votes of the payer.
- (zz) The 5% rate for dividends applies if the beneficial owner of the dividends is a company that controls at least 25% of the voting power in the payer.
- (aaa) The 10% rate applies to royalties for the use of, or the right to use, industrial, commercial, or scientific equipment.
- (bbb) The 5% rate applies to dividends paid to a company holding directly or indirectly at least 10% of the voting power of the payer. The 15% rate applies to other dividends.
- (ccc) This treaty was signed on 14 November 2002, but it has not yet been ratified.
- (ddd) Under a protocol to the Canada-United Kingdom treaty, which is effective from 1 January 2005, a 5% rate applies to dividends paid to a company that controls at least 10% of the voting power of the payer.
- (eee) The 0% rate applies to royalties pertaining to certain cultural works, computer software, patents or know-how.
- (fff) Under a protocol to the Canada-United Kingdom treaty, which is effective from 1 January 2005, payments for the use of computer software, patents and certain know-how are exempt.
- (ggg) The 10% rate applies if the recipient is a company holding directly or indirectly at least 10% of the voting power of the payer.
- (hhh) The 5% rate applies to certain royalties pertaining to certain cultural works, computer software, patents or know-how.
- (iii) The general withholding tax rate for royalties is 10%. A 5% rate applies to royalties pertaining to certain cultural works, computer software, patents and know-how.
- (jjj) The general withholding tax for royalties is 10%. Royalties pertaining to certain cultural works, computer software, patents and know-how are exempt.
- (kkk) The general withholding tax rate is 10%. Royalties pertaining to certain cultural works, computer software, patents and know-how are exempt.
- (lll) The general withholding tax rate for royalties is 10%. Royalties pertaining to certain cultural works, computer software, patents and know-how are exempt from withholding tax.
- (mmm) The 5% rate applies to dividends paid to a company holding directly or indirectly at least 10% of the voting power of the payer. The 15% rate applies to other dividends.
- (nnn) The 5% rate applies to dividends paid to a company holding directly or indirectly at least 10% of the voting power of the payer. The 15% rate applies to other dividends.
- (ooo) The 15% rate applies if the recipient is a company that holds an equity percentage of at least 10% in the payer of the dividends.

- (ppp) The 10% rate applies if the recipient is a company that controls directly or indirectly at least 25% of the voting power in the payer.
- (qqq) The 5% rate applies to royalties with respect to certain cultural works, and to royalties for certain computer software, patents and know-how if the payer and payee are not related.
- (rrr) The general withholding tax for royalties is 10%. Royalties pertaining to certain cultural works and computer software and royalties for information concerning industrial, commercial or scientific experience are exempt.
- (sss) The 3% rate applies to royalties paid for rights to use news. The 5% rate applies to royalties pertaining to certain cultural works. The 10% rate applies to royalties pertaining to patents, trademarks, designs or models, plans, secret formulas and technical assistance.
- (ttt) The general rate for royalties is 15%. The 25% rate applies to royalties pertaining to the use of trademarks.
- (uuu) The 10% rate applies if the beneficial owner of the dividends is a company that owns at least 10% of the voting power in the payer of the dividends.
- (vvv) The 0% rate applies to royalties on cultural works as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience.
- (www) The 15% rate applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 10% of the voting power in the payer.
- (xxx) The 15% rate applies to dividends paid to a company that owns at least 10% of the voting shares of the payer during the six-month period immediately preceding the date of payment of the dividend.
- (yyy) The 5% rate applies to royalties pertaining to cultural works.
- (zzz) The 20% rate applies if the beneficial owner of the dividends is a company that controls directly or indirectly at least 15% of the voting power in the payer.
- (aaaa) The 20% rate applies to the following: patent royalties; royalties for the use, or the right to use, trademarks, motion picture films and films or videotapes for use in connection with television; and payments for the use of, or the right to use, industrial, commercial, scientific or harbor equipment.
- (bbbb) The 7.5% rate applies to fees for technical services.

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## CAYMAN ISLANDS

(Country Code 1)

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## A. At a Glance

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0

Withholding Tax (%)	
Dividends	0
Interest	0
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0

## **B. Taxes on Corporate Income and Gains**

The Cayman Islands does not levy taxes on income, profits, wealth or capital gains.

## **C. Corporate License Fees**

**Ordinary Resident Company.** An ordinary resident company may transact foreign and domestic business from within the Cayman Islands. A Trade and Business License is required if business is to be conducted within the Islands (see Section D). If Caymanians or persons with Cayman status do not own at least 60% of the issued share capital, the company must also obtain a Local Companies Control Law License before it can do business in the Islands.

Incorporation fees range from a minimum of CI\$150 to a maximum of CI\$350. Annual fees range from a minimum of CI\$150 to a maximum of CI\$350. The fees are based on authorized capital.

**Ordinary Nonresident Company.** An ordinary nonresident company is similar to a resident company, but it is not permitted to conduct business within the Cayman Islands. However, it may transact within the Islands all matters necessary to conduct its business outside the Islands; for example, it can negotiate contracts or open bank accounts.

Incorporation fees range from a minimum of CI\$400 to a maximum of CI\$565. Annual fees range from a minimum of CI\$400 to a maximum of CI\$565. The fees are based on authorized capital.

**Exempted Company.** An exempted company is the most common form of company used by the offshore investor. An exempted company, similar to an ordinary nonresident company, may not conduct business within the Cayman Islands, but may transact from within the Islands all the matters necessary to conduct its business outside the Islands. Several exemptions from Companies Law and some other advantages, including the availability of a Tax Exemption Certificate, make the exempted company attractive to the offshore investor. A Tax Exemption Certificate provides that no law enacted in the Cayman Islands may impose an income, profits or gains tax on the exempted company and that no such tax or an estate duty or inheritance tax may be imposed on the shares, debentures or other obligations (or the income derived from such instruments) of the exempted company. The exemptions provided in the certificate are for a renewable 20-year period.

Incorporation fees range from a minimum of CI\$470 to a maximum of CI\$1,968. Annual fees range from a minimum of CI\$470 to a maximum of CI\$1,968. The minimum fee is based on a maximum authorized capital of CI\$42,000; the fee increases on a sliding scale for authorized capital in excess of this amount until it reaches the maximum of CI\$1,968, which applies to authorized capital exceeding CI\$1,640,000.

An exempted company, through its memorandum and articles of association, may be established as a limited duration company (LDC) or a limited liability company (LLC). These companies may be treated by the authorities of the United States and other jurisdictions as partnerships for tax and other purposes. An exempted company is classified as an LDC if its corporate existence terminates on the happening of one or more specified events and if it has a maximum life of 30 years. An LLC may issue two classes of shares — one with limited liability and the other with unlimited liability. LDCs must pay a minimum fee of C\$200 on registration in addition to the regular fees described above.

#### D. Miscellaneous Matters

**Foreign-Exchange Controls.** The currency of the Cayman Islands is the Cayman Islands dollar (C\$). The exchange rate of the U.S. dollar against the Cayman Islands dollar is US\$1.2:C\$1.

The Cayman Islands has no foreign-currency exchange control regulations.

**Business Licenses.** Unless exempted, every person or company carrying on a trade or business must have an annual license for each place where such trade or business is carried on. The amount of the fee depends on the type and location of the business, as well as on the number and type of employees.

License fees are also payable by all insurance companies and all banks registered in the Cayman Islands. The following are the annual license fees.

	<b>Insurance Companies C\$</b>	<b>Banking (and Trust Companies) C\$</b>
Class A (domestic retail)	30,000 to 40,000	400,000
Class A (nondomestic)	N/A*	130,000 to 400,000
Class B Unrestricted	7,500	57,000 to 60,000
Class B Restricted	7,500	37,000 to 60,000

\* Not applicable.

The fees for Class B banking and trust licenses depend on the corporate structure of the relevant bank (the structures are branches, subsidiaries and private/affiliated companies). Restricted trust companies must pay an annual fee of C\$7,000 for a restricted trust license alone.

Mutual funds licensed under the Mutual Funds Law must pay an annual license fee of C\$2,500. Mutual fund administrators must pay the following license renewal fees: restricted license, C\$7,000; and unrestricted license, from C\$20,000 to C\$25,000.

Company managers and corporate service providers licensed under the Company Managers Law must pay an annual license fee. For managers, the annual license fee ranges from C\$750 to C\$20,000, plus C\$50 per managed company. For service providers, the annual license fee ranges from C\$500 to C\$10,000, plus C\$25 per company.

#### E. Tax Treaties

The Cayman Islands has not entered into tax treaties with any other jurisdiction.

# CHILE

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## A. At a Glance

Corporate Income Tax Rate (%)	17
Capital Gains Tax Rate (%)	17
Branch Tax Rate (%)	17
Withholding Tax (%)	
Dividends	35 (a)(b)
Interest	35 (a)(c)
Royalties from Patents, Trademarks, Formulas and Similar Items	30 (a)(d)



Technical Services	20 (e)
Other Fees and Compensation for Services Rendered Abroad	35 (a)
Branch Remittance Tax	18 (f)
Net Operating Losses (Years) (g)	
Carryback	Unlimited
Carryforward	Unlimited

- (a) The tax applies to payments to nonresidents.
- (b) The 35% tax is applied to the amount of the grossed-up dividend. A credit is available for the corporate tax paid, resulting in a 21.7% effective tax rate on the amount of the net dividend.
- (c) A reduced rate of 4% applies to interest paid on loans granted by foreign banks or financial institutions or paid with respect to import operations.
- (d) The withholding tax rate is reduced to 15% for payments with respect to the following: invention patents; models; industrial drawings and designs; layout sketches or layouts of integrated circuits; new vegetable patents; and the use or exploitation of computer programs (software). The reduced tax rate does not apply to payments made to related parties or to companies resident in countries included in a list prepared by the Chilean Ministry of Finance containing the territories considered to be tax havens. As a result, the withholding tax rate for such payments is 30%. Two companies are considered to be related if one of the following conditions is satisfied: either company owns 10% or more of the other company's capital; either company participates in 10% or more of the other company's revenues; or a shareholder or owner owns 10% or more of each company or participates in 10% or more of its revenue.
- (e) A reduced 15% rate applies to payments for engineering, technical assistance, professional and other technical services rendered in Chile or abroad. However, if the parties are related (see footnote [d] above) or if the payments are being made to a company domiciled in a country included in the tax-haven list (see footnote [d] above), the withholding tax rate is 20%.
- (f) The 35% tax is applied to the grossed-up branch remittance. A credit is available for the branch level tax paid, resulting in a 21.7% effective tax rate on the amount of the net remittance.
- (g) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** A Chilean resident corporation is subject to income tax on its worldwide income. A resident corporation is one that is incorporated in Chile. A branch of a foreign corporation must pay tax on its Chilean-source income. The corporate income tax is applied on accrued net income.

**Rates of Corporate Tax.** The corporate income tax rate is 17%. Income derived from activities developed in certain regions of Chile (the extreme north and south) is exempt from corporate tax.

The corporate income tax is a credit against the tax on profits distributed to nonresident partners or shareholders or to resident individual partners and shareholders. Intercompany dividends or profit distributions between resident entities are not subject to tax.

**Mining Tax.** A special tax on mining activities is imposed on any individual or legal entity that extracts minerals subject to concession and sells those minerals in any state of production. The tax is imposed at progressive rates that range from 0% to 5%, depending on the amount of gross sales. The tax base is the operational taxable income (as defined). Sales made by related mining entities are attributed to the taxpayer for purposes of determining the tax rate. The bill grants the tax authorities the power to challenge for cause the sale prices of mining products for purposes of determining the rate and tax base.

The mining tax is imposed in addition to the income tax. However, the mining tax may be deducted as an expense for income tax purposes for the year in which the tax is due.

**Chilean Holding Company Regime.** Under the Chilean Holding Company (CHC) regime, a participation exemption is granted with respect to income earned, dividend distributions and capital gains (on the transfer of the investments made by a CHC, as well as on the transfer of the shares of a CHC). In effect, foreign investors using the CHC to channel foreign investments into Chile are not subject to income tax in Chile with respect to investments held by the CHC outside of Chile (that is, on income earned on their participations, on distributions of the income and on capital gains earned on disposals of the investments).

**Capital Gains.** Capital gains are taxed at the regular corporate rate if the capital gains relate to the business of a company. Capital gains resulting from the sale of shares of a Chilean corporation are subject to a final 17% tax if the following conditions are satisfied:

- The shares were owned for at least one year;
- The seller is not a broker-dealer; and
- The parties to the transaction are not related.

**Administration.** All accounting periods in Chile must end on 31 December; the final date for payment of income tax is 30 April.

Provisional monthly payments on account of final annual income tax are due on the 12th day of the following month.

**Foreign Tax Relief.** A foreign tax credit, up to a maximum of 30% of net foreign-source income may be claimed. Any additional foreign income tax is deductible as an expense.

### C. Determination of Trading Income

**General.** Taxable income, determined in accordance with generally accepted accounting principles, includes all profits, with the exception of some minor items that are not considered income for tax purposes, such as bonuses paid by the government to foster the development of certain areas of the country and to increase employment.

In general, all necessary expenses for producing income, proven and justified, may be deducted to determine taxable income. However, expenses related to automobiles are not deductible.

**Inventories.** For inventory valuation, the first-in, first-out (FIFO) system is accepted by law, as is the weighted-average cost method. A corresponding monetary correction must be added to cost.

**Monetary Correction.** The income tax law contains provisions designed to prevent the taxation of profits created by inflation. The provisions, known as monetary correction, require taxpayers to revalue certain assets and liabilities annually based on changes in the consumer price index (CPI) and in foreign-exchange rates.

The following corrections generally increase net income for legal and tax purposes:

- The initial net value of fixed tangible assets is restated based on the change in the CPI, which is fixed monthly by the National Statistical Service. Depreciation is computed on the value of the assets after restatement.

- Inventories existing at the balance-sheet date are restated to their replacement cost.
- Credits or rights that are in foreign currency or linked to price indices are corrected based on the change in the foreign-exchange rate or the relevant index.

The following corrections decrease net income for legal and tax purposes:

- Total capital invested in the business is corrected based on the difference between the CPI for the calendar month preceding the financial year and the CPI for the month preceding the balance-sheet date. For this purpose, invested capital is the taxpayer's equity at the beginning of the financial year, all intangible, nominal, transitory, memorandum and other accounts that do not represent actual investments having been previously deducted.
- Increases and decreases in invested capital during the financial year are corrected based on the change in the CPI for the period between the increase or decrease in invested capital and the balance-sheet date. Income is decreased by the correction of increases and increased by the correction of decreases.
- Debts and liabilities that are in foreign currency or linked to price indices are corrected based on the foreign-exchange rate at the balance-sheet date or according to the relevant index.

**Depreciation.** Depreciation must be calculated using the straight-line method. The tax authority has established the following normal periods of depreciation.

<b>Manufacturing Industry and Trade</b>	<b>Years</b>
Machinery	15
Heavy tools	8
Light tools	3
General installations	10
Trucks	7
Cars, pickups, station wagons and buses	7
Computers, computer systems, peripherals and similar items	6
 <b>Building and Mining Industries</b>	 <b>Years</b>
Solid buildings	80
Semisolid buildings	20 to 50
Buildings of light materials	10
Bulldozers, tractors, caterpillars and other machines employed in heavy construction	8
Drilling equipment, internal combustion engines, soldering equipment and similar equipment	6
Machines employed in mining activities (general rate)	9

Annual depreciation rates must be applied after the revaluation of fixed assets according to the rules of monetary correction (see *Monetary Correction* above). Accelerated depreciation may be applied to new fixed assets and to imported fixed assets with normal useful lives of three years or more. The accelerated method permits the calculation of depreciation based on a useful life for an asset equivalent to one-third of the normal useful life established by the Chilean tax authorities. However, accelerated depreciation may be used only in determining trading income for corporate tax purposes. The difference between normal and accelerated

depreciation must be recaptured on the payment of dividends and profit distributions to nonresident shareholders or partners or to resident individual shareholders or partners for purposes of calculating withholding and personal income taxes.

**Relief for Losses.** Losses must first be carried back to offset undistributed profits of prior years and then may be carried forward without a time limit. However, if a qualified change of ownership occurs, accumulated tax losses may not be deducted from income generated after the ownership change.

#### **D. Value-Added Tax**

Value-added tax (VAT) applies to sales and other transactions of tangible personal property, as well as to payments for certain services. It also applies to certain real estate transactions. The general rate is 19%.

#### **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The Central Bank of Chile issues general rules regarding import and export trade and international exchange operations. Foreign-exchange trade related to foreign investments must be conducted through commercial banks in the formal market, which may be controlled by the Central Bank in exceptional circumstances. An informal market is available for transactions between private individuals or entities, including import and export transactions, without government control, at prices determined by supply and demand.

**Transfer Pricing.** Under the Income Tax Law, if prices of goods and services in internal and external transactions differ significantly from the market values of such items, the tax authorities may adjust the prices for tax purposes, particularly if the transactions are between related parties.

For cross-border transactions between related parties, Chilean law adopts the arm's length principles. Acceptable transfer-pricing methods include the cost-plus, resale price and comparable uncontrolled price methods.

**Debt-to-Equity Rules.** Indebtedness of local companies resulting from loans or financing granted by related parties abroad and secured with money provided by related or unrelated third parties (essentially, back-to-back loans) is limited to a 3:1 debt-to-equity ratio. For the purpose of calculating this ratio, debt equals the sum of liabilities owed to foreign creditors that generate interest taxed at a 4% withholding tax rate (see footnote [c] to Section A). Interest payments abroad in excess of the ratio are subject to a total tax burden of 35%.

#### **F. Treaty Withholding Tax Rates**

The table below lists withholding tax rates under Chile's treaties. The Argentina treaty is based on the Andean Pact model convention, while the other treaties are based on the Organization for Economic Cooperation and Development (OECD) model convention.

	<b>Dividends %</b>	<b>Interest %</b>	<b>Patent and Know-How Royalties %</b>
Argentina	35 (d)	35/4	30
Brazil	10/15 (a)	15	15
Canada	10/15 (a)	15 (b)	15 (c)
Croatia	5/15 (a)	5/15	5/10
Denmark	5/15 (a)	15 (b)	5/15 (c)
Ecuador	5/15 (a)	15 (b)	10/15 (c)
France	15 (a)	5/15	5/10
Korea	5/10 (a)	10/15 (b)	5/15 (c)
Mexico	5/10 (a)	15 (b)	15 (c)
New Zealand	15 (a)	10/15 (b)	10 (c)
Norway	5/15 (a)	15 (b)	5/15 (c)
Peru	10/15 (a)	15	15 (c)
Poland	5/15 (a)	15 (b)	5/15 (c)
Spain	5/10 (a)	5/15 (b)	5/10 (c)
Sweden	5/10 (a)	5/15	5/10
United Kingdom	5/15 (a)	5/15 (b)	5/10 (c)
Nontreaty countries	35 (e)	35 (f)	30 (g)

- (a) With respect to Chile, the treaty withholding tax rates for dividends do not apply to the 35% withholding tax applicable under domestic law as long as the corporate tax is creditable against the withholding tax.
- (b) These treaties have a most favorable nation (MFN) clause with respect to interest.
- (c) These treaties have a MFN clause with respect to royalties. In the case of the Peru treaty, the clause applies after a five-year period beginning on the effective date of the Chile-Peru treaty.
- (d) The Chile-Argentina treaty, which is based on an exemption system, provides that income sourced in Chile is subject to tax in Chile under Chilean domestic law and that such income is exempt from income tax in Argentina. Accordingly, dividends paid by a Chilean corporation to an Argentine shareholder are subject to withholding tax at the same rate as under Chilean domestic law.
- (e) The rate is 35% of the grossed-up dividend less a 17% credit for the corporate tax paid, resulting in a 21.7% effective withholding tax rate on the net dividend amount.
- (f) A reduced 4% tax rate is available for interest payments on loans granted by foreign banks or financial institutions or paid with respect to import operations.
- (g) The withholding tax rate is reduced to 15% for payments with respect to the following: invention patents; models; industrial drawings and designs; layout sketches or layouts of integrated circuits; new vegetable patents; and the use or exploitation of computer programs (software). The reduced tax rate does not apply to payments made to related parties or to companies resident in countries included in a list prepared by the Chilean Ministry of Finance containing the territories that are considered to be tax heavens. As a result, the withholding tax rate for such payments is 30%. Two companies are considered to be related if one of the following conditions is satisfied: either company owns 10% or more of the other company's capital; either company participates in 10% or more of the other company's revenues; or a shareholder or owner owns 10% or more of each company or participates in 10% or more of its revenue.

Chile has signed tax treaties with Colombia, Ireland, Malaysia, Paraguay, Portugal, the Russian Federation and Thailand, which are awaiting ratification by the Chilean Congress. Tax treaty negotiations with South Africa have concluded, while negotiations are in progress with Australia, Belgium, China, Cuba, the Czech Republic, Finland, Hungary, India, Italy, Kuwait, the Netherlands, Switzerland, the United States and Venezuela.

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*This chapter refers only to the taxation of entities under the tax laws of the People's Republic of China (PRC). The tax laws in the Special Administrative Regions of Hong Kong and Macau are separate sets of rules that are completely distinct from those in the PRC. For information concerning the tax laws in Hong Kong and Macau, see the chapters concerning such jurisdictions on page 353 and page 554, respectively.*

*Effective from 1 January 2008, a unified PRC Enterprise Income Tax Law applies to both domestic enterprises and business operations with foreign investment. The unified law replaces the previous Enterprise Income Tax Law (applicable to domestic enterprises) and Foreign Investment Enterprise and Foreign Enterprise Income Tax Law (applicable to business operations with foreign investment). Under the unified law, differences no longer exist between the taxation of domestic-owned enterprises and the taxation of foreign-owned enterprises.*

**A. At a Glance**

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25 (a)
Branch Tax Rate (%)	25
Withholding Tax (%) (b)	
Dividends	10
Interest	10
Royalties from Patents, Know-how, etc.	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) Capital gains derived by foreign enterprises from disposals of interests in foreign investment enterprises are subject to a final withholding tax of 10% instead of income tax. This rate may be reduced by applicable tax treaties.
- (b) The statutory rate is 20%, which is reduced to 10% by relevant regulations.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** On 16 March 2007, the People's Republic of China (PRC) enacted the new PRC Enterprise Income Tax

Law (the New Law), which is effective from 1 January 2008. Before the enactment of the New Law, two separate tax laws, one for domestic enterprises and the other for foreign-owned business operations (including foreign investment enterprises [FIEs] and foreign enterprises), were in effect for more than 15 years. The New Law applies to all business operations regardless of their ownership, except for sole proprietorships and partnerships to which the individual income tax law applies. FIEs that were incorporated (that is, obtained their business license) before 16 March 2007 are entitled to a five-year transitional period beginning 1 January 2008. During this transitional period, entitlement to tax incentives under the prior tax law can be grandfathered.

Corporate residents of China are taxed on their worldwide income, including income from business operations, investment and other sources. A foreign tax credit is allowed for income taxes paid in other countries. This credit is capped at the PRC income tax payable on the same income calculated under the New Law.

In general, a company is regarded as tax resident in China if it is incorporated in China or effectively managed in China. The place of effective management is defined as overall management and control over the production, business, personnel, accounting, and assets of a company.

Nonresident companies are taxed on PRC-source income only. However, if the nonresident company has an establishment in the PRC, non-PRC source income effectively connected with the PRC establishment is taxed.

The term “establishment” is broadly defined to include the following: a place of management; a branch; an office; a factory; a workshop; a mine or an oil and gas well or any other place of extraction of natural resources; a building site; a construction, assembly, installation or exploration project; a place for the provision of labor services; and business agents.

**Rates of Corporate Tax.** The statutory rate of enterprise income tax is 25%, effective from 1 January 2008. The withholding tax rate on passive income (including dividends, interest, royalties and capital gains) of non-PRC tax residents is 10%.

Qualified small and less-profitable enterprises may benefit from a reduced rate of 20%. A preferential tax rate of 15% applies to qualified High and New Technology Enterprises.

A five-year tax holiday (exemption for the first two years and 50% reduction for the next three years) is granted to newly established and qualified High and New Technology Enterprises that are incorporated after 1 January 2008 and are located in the Shanghai Pudong New Area or one of the five Special Economic Zones (SEZs), which are Hainan Province, Shantou, Shenzhen and Zhuhai in Guangdong Province and Xiamen in Fujian Province.

Encouraged investment projects in China’s Western Region can continue to enjoy a 15% reduced tax rate until 2010. Certain specified industries in the Western Region, such as transportation, electricity, irrigation and broadcasting, can also benefit from a five-year tax holiday on top of the 15% rate.

In addition, tax incentives are available to enterprises engaged in industries or projects encouraged by national policies. The encouraged industries and projects typically include the following: research and development for new technologies and products; environmentally friendly or water- or energy-saving industries; farming, forestry, animal husbandry and fishery; infrastructure; and venture capital enterprises.

**Capital Gains and Losses.** Capital gains and losses are treated in the same manner as other taxable income and losses. However, PRC-source capital gains derived by nonresident enterprises, such as gains from the disposal of a FIE, are subject to a 10% withholding tax. In addition to income tax, real property gains tax is imposed on gains derived from transfers of real properties (see Section D).

**Administration.** The tax year in China is the calendar year.

An annual return, together with audited financial statements issued by a certified public accountant registered in the PRC, is due within five months after the end of the tax year. Enterprises must settle all outstanding tax liabilities within the same period.

In addition, enterprises must also file quarterly provisional returns within 15 days after the end of each quarter, together with payments of provisional tax based on actual profits. If an enterprise has difficulty filing a provisional tax return based on the actual quarterly profits, it may pay tax based on estimated profits. The estimated profits are normally computed by reference to one-quarter of the enterprise's actual profits for the preceding year. Otherwise, they are computed under other methods approved by the tax bureau.

Late filing or late payment triggers a surcharge of 0.05% per day and a discretionary penalty of 50% to 500% of the unpaid tax liabilities. For special tax adjustments, such as transfer-pricing adjustments and antiavoidance adjustments (see Section E), an interest charge is imposed, based on the renminbi yuan (RMB) loan base rate published by the People's Bank of China in the tax year to which the tax payment is related. An additional 5% interest charge is also imposed for special adjustments.

**Dividends.** Profits of FIEs distributed as dividends are subject to withholding tax when remitted outside the PRC. However, dividends paid between "qualified" resident companies may be exempted. For this purpose, resident companies are "qualified" if one tax resident has made a direct investment in the other tax resident. Dividends attributable to publicly traded shares are also treated as tax-exempt investment income if the holding period of the shares is longer than 12 months.

**Foreign Tax Relief.** A tax credit is allowed for foreign taxes paid in other countries by PRC tax residents, not exceeding the relevant PRC tax payable on such income. Excess foreign tax credits may be carried forward for a period of five years. The denominator for computing the foreign tax credit limitation is based on worldwide taxable income.

### C. Determination of Trading Income

**General.** Taxable income is defined as total revenues less the following: nontaxable income; tax-exempt income; deductible

expenses; and tax losses. No major differences exist between tax and accounting methods for income computation purposes. Dividends, bonuses, interest, royalties, rent and other income are included in taxable income.

In general, all necessary and reasonable expenses incurred in carrying on a business are deductible for tax purposes. However, specified limits apply to the deductibility of advertisement expenses, entertainment expenses, union fees, employee welfare costs and employee education expenses. One hundred-fifty percent of qualified research and development (R&D) expenditure can be deducted. Charitable donations of up to 12% of the total annual profit are deductible.

Management fees paid between enterprises, rental and royalty fees paid between business units of an enterprise, and interest paid between business units of nonbank enterprises are not deductible. Interest paid on related-party borrowing that does not meet debt-to-equity ratio rules (see Section E) may not be deductible. Other nondeductible expenses include the following: sponsorship expenses; interest on equity capital; income tax payments including penalties and surcharges; and other expenses not related to production or business operations.

For an establishment in the PRC of an enterprise that is not a resident for tax purposes, reasonable expenses allocated from the overseas head office are deductible if these expenses are incurred by the head office for the production or business operations of such establishment and are supported by proper documents issued by the head office.

**Inventories.** For tax purposes, the cost of inventories is determined in accordance with the following rules:

- The cost of inventories that are paid for in cash is the sum of the purchase price and the related taxes and charges actually paid;
- The cost of inventories that are not paid for in cash is determined based on the fair market value of the consideration and the related taxes and charges actually paid; and
- The cost of agricultural products generated from biological assets (for example, animals or woods) is determined based on the necessary raw material, labor and relevant overhead expenditure actually incurred.

**Provisions.** Provisions that have not been approved by the tax authorities are generally not deductible. These include various provisions and allowances for asset impairment and risk reserves.

**Tax Depreciation.** Depreciation of tangible properties is generally computed using the straight-line method. The following are minimum useful lives for various assets.

<b>Asset</b>	<b>Years</b>
Buildings and structures	20
Aircrafts, trains, vessels, machinery, mechanisms and other production equipment	10
Appliances, tools, furniture and other assets related to production and business operations	5
Means of transport other than aircrafts, trains and vessels	4
Electronic equipment	3

Intangible assets, including technical know-how, patents and trademarks, are amortized over the contractual term or over 10 years if a time period is not specified. Self-developed goodwill may not be amortized or deducted. Acquired goodwill is deductible only if the entire business is transferred or liquidated.

**Relief for Losses.** Tax losses may be carried forward for up to five years. Carrybacks are not allowed.

**Groups of Companies.** In general, consolidated returns between enterprises are not allowed, and all companies must file separate tax returns, unless specifically approved by government authorities. However, tax resident enterprises in China may adopt consolidated filing for units (branches and establishments without legal person status) operating in different areas of China. On approval by the relevant tax authorities, nonresident enterprises that have two or more establishments in China may select a main establishment to file a consolidated tax return.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT)	
Standard rate	17
Rate on specified products (primarily basic necessities), agricultural products and utility services	13
(VAT previously paid on the purchase of raw materials, parts and taxable services that have been used in the production of export goods is refunded. Under the original VAT regulation, the rate of this refund was 17%. However, under various tax notices issued by the State Administration of Taxation (SAT), the rates of the refund for certain goods have been reduced to various lower rates including 0%, depending on the type of goods exported.)	
Consumption tax, on the production and importation of certain luxury items, including cigarettes, gasoline, alcoholic beverages, jewelry, cosmetics and motor vehicles	Various
Business tax, on various types of services and income not derived from production, including transportation, construction, finance, insurance, postal services, telecommunications, cultural and sporting events, entertainment establishments, hotels and restaurants, rentals, advertising, tourism and the transfer of intangible and immovable properties	
General rates	3 to 5
Finance and insurance businesses	5
Entertainment establishments	20
Transfers of intangible and immovable properties; under a tax bureau notice, transfers of intangible properties include transfers of rights to use intangible properties in the PRC; a tax bureau notice apparently indicates	

Nature of Tax	Rate (%)
that royalties received by foreign companies from licensing intangible properties to the PRC are subject to business tax; transfers of technology, licensing of software and transfers of equity interests can be exempt from business tax	5
Real property gains tax; imposed on real property transfers	30 to 60

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Chinese government permits the free convertibility of current account items of China incorporated enterprises. Current account items are defined as transactions occurring daily that involve international receipts and payments. Current account foreign-exchange receipts and payments include trading receipts and payments, service receipts and payments, unilateral transfers and dividends paid from after-tax profits.

*Remittances of Dividends and Profits.* Remittances of after-tax profits or dividends to foreign investors in FIEs must be supported by written resolutions of the board of directors and by audited financial statements, and may not be made until a tax clearance is issued by the tax authorities. They must be made from foreign-exchange accounts. Otherwise, conversion and payment must take place at designated foreign-exchange banks.

*Remittances of Interest and Principal.* Interest payments on foreign loans are considered current account items. After receipt of tax clearance from the tax authorities, these payments may be made through the enterprise's special foreign-exchange bank account or through designated foreign-exchange banks with the approval of the State Administration for Foreign Exchange (SAFE).

For principal repayments, enterprises must submit a formal application to the SAFE for its approval. This application must be accompanied by the Foreign Exchange Loan Registration Certificate, a copy of the loan agreement and the notice of repayment of principal issued by the foreign creditor. After receiving tax clearance from the tax authorities and approval from the SAFE, the enterprise may repay the principal from its special foreign-exchange bank account or through conversion at designated foreign-exchange banks.

*Remittances of Royalties and Fees.* After receipt of tax clearance from the tax authorities, payments of royalties and fees may be made either out of the enterprise's special foreign-exchange bank account or through currency conversion and payment at a designated foreign-exchange bank. Proper documentation (such as royalty agreements, invoices and other tax and business documents) is required for all payments of royalties and fees.

**Debt-to-Equity Requirements.** For FIEs in the PRC, the following debt-to-equity ratios are applicable for the purpose of obtaining foreign-currency loans from foreign parties (including foreign related parties) and meeting corporate law requirements:

- For investment projects below US\$3 million, the capital contribution must equal or exceed 70% of the total investment;

- For investment projects of US\$3 million to US\$10 million, the minimum capital requirement is 50% of the total investment, but not less than US\$2.1 million;
- For investment projects of US\$10 million to US\$30 million, the minimum capital requirement is 40% of the total investment, but not less than US\$5 million; and
- For investment projects in excess of US\$30 million, the minimum capital requirement is 33.3% of the total investment, but not less than US\$12 million.

The New Law provides for a separate set of debt-to-equity rules for tax purposes. However, at the time of writing of this chapter, detailed guidelines had not yet been issued by the SAT.

**Transfer Pricing.** China has introduced transfer-pricing rules under which all amounts paid or charged in business transactions between related parties must be determined based on an arm's length standard. If the parties fail to meet this requirement, the tax bureau may make reasonable adjustments by using one of the following methods:

- Comparable uncontrolled price (CUP);
- Resale price method (RPM);
- Cost-plus method (CPM);
- Transactional net margin method (TNMM);
- Profit split method (PSM); or
- Other methods that are consistent with the arm's length principle.

The New Law recognizes the concept of cost-sharing arrangements. Taxpayers may apply for Advance Pricing Agreements in the PRC.

**Antiavoidance Rules.** The New Law has introduced general anti-avoidance rules, which require a business purpose for any tax planning.

**Controlled Foreign Corporations.** The New Law introduces controlled foreign corporation (CFC) rules, which are designed to counter income deferral strategies. CFCs' earnings are subject to current PRC tax if they are retained overseas without a reasonable business purpose.

## F. Treaty Withholding Tax Rates

The following are the treaty withholding tax rates for dividends, interest and royalties.

	Dividends %	Interest %	Royalties %
Albania	10	10	10
Algeria	5/10	7	10
Armenia	5/10	10	10
Australia	10	10	10
Austria	10 (d)	10 (c)	10 (a)
Azerbaijan	10	10	10
Bahrain	5	10	10
Bangladesh	10	10	10
Barbados	5	10	10
Belarus	10	10	10
Belgium	10	10	10 (a)
Brazil	10	10	10
Brunei Darussalam	5	10	10



	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Bulgaria	10	10	10 (b)
Canada	10	10	10
Croatia	5	10	10
Cuba	5/10	7.5	5
Cyprus	10	10	10
Czechoslovakia (f)	10	10	10
Denmark	10	10	10 (b)
Egypt	8	10	8
Estonia	5/10	10	10
Finland	10	10	10 (b)
France	10	10	10 (a)
Gambia	10	10	10
Georgia	10	10	5
Germany	10	10	10 (b)
Greece	5/10	10	10
Hong Kong	5/10	7	7
Hungary	10	10	10
Iceland	5/10	10	10 (b)
India	10	10	10
Indonesia	10	10	10
Ireland	5/10	10	10
Israel	10	10 (c)	10 (b)
Italy	10	10	10 (b)
Jamaica	5	7.5	10
Japan	10	10	10
Kazakhstan	10	10	10
Korea	5/10	10	10
Kuwait	5	5	10
Kyrgyzstan	10	10	10
Laos	5	10	10
Latvia	5/10	10	10
Lithuania	5/10	10	10
Luxembourg	5/10	10	10 (a)
Macedonia	5	10	10
Malaysia	10	10	10
Malta	10	10	10
Mauritius	5	10	10
Mexico	5	10	10
Moldova	5/10	10	10
Mongolia	5	10	10
Netherlands	10	10	10 (a)
New Zealand	10	10	10
Norway	10	10	10
Oman	5	10	10
Pakistan	10	10	10
Papua New Guinea	15	10	10
Philippines	10	10	10
Poland	10	10	10 (b)
Portugal	10	10	10
Romania	10	10	7
Russian Federation	10	10	10
Saudi Arabia	5	10	10
Seychelles	5	10	10
Singapore	5/10	10 (c)	10 (a)
Slovenia	5	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
South Africa	5	10	10 (b)
Spain	10	10	10 (a)
Sri Lanka	10	10	10
Sweden	10	10	10 (b)
Switzerland	10	10	10 (a)
Thailand	10	10	10
Tunisia	8	10	10
Turkey	10	10	10
Ukraine	5/10	10	10
United Arab Emirates	7	7	10
United Kingdom	10	10	10 (b)
United States	10	10	10 (b)
Uzbekistan	10	10	10
Venezuela	10	10 (i)	10
Vietnam	10	10	10
Yugoslavia (h)	5	10	10
Nontreaty countries (f)	10	10	10

- (a) The withholding tax rate is 10%, but for royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment, the rate is applied to only 60% of the royalties paid.
- (b) The withholding tax rate is 10%, but for royalties paid for the rental of industrial, commercial or scientific equipment, the rate is applied to only 70% of the royalties paid.
- (c) The withholding tax rate is reduced to 7% for interest paid to banks or financial institutions.
- (d) The withholding tax rate is reduced to 7% if the recipient holds directly at least 25% of the voting shares of the payer of the dividends.
- (e) See applicable footnotes to Section A.
- (f) China is honoring the Czechoslovakia treaty with respect to the Czech and Slovak Republics until new treaties are signed.
- (g) This is a treaty between the PRC and the Federal Republic of Yugoslavia.
- (h) The withholding tax rate is reduced to 5% for interest paid to banks or financial institutions.

China has signed double tax treaties with Morocco, Myanmar, Nepal, Nigeria and Qatar, but these treaties have not yet been ratified.

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**A. At a Glance**

Corporate Income Tax Rate (%)	33 (a)
Capital Gains Tax Rate (%)	33 (a)
Branch Tax Rate (%)	33 (a)
Withholding Tax (%)	
Dividends	0/20/33 (a)(b)
Interest	0 (c)
Royalties	33 (a)
Technical Services, Technical Assistance and Consulting Services	10 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- (a) The 33% rate is effective from the 2008 tax year.
- (b) The 0% rate applies to dividends paid to nonresidents on or after 1 January 2007 if the dividends are paid out of profits that were taxed at the corporate level. If the dividends were not taxed at the corporate level, the dividends are taxed at the regular corporate income tax rate of 33%. This tax is withheld at source. A 7% rate applies to dividends declared in the 2006 and prior tax years

that were reinvested in Colombia and subsequently remitted to nonresidents within five years after the date of reinvestment. If such dividends are reinvested for a period of five years or more, they are not subject to tax. Dividends paid to residents are subject to a 20% withholding tax if the taxpayer is required to file an income tax return; otherwise, the withholding tax rate is 33%.

- (c) Interest paid to qualified foreign financial entities on specified loans is deemed to be foreign-source income and is accordingly exempt from withholding tax.
- (d) This withholding tax rate applies to technical services, technical assistance and consulting services rendered by nonresidents in Colombia or from abroad.
- (e) Beginning with the 2007 tax year, tax losses may be carried forward without limitation. Certain restrictions apply to the transfer of losses with respect to spin-offs and mergers (for details, see Section C). Tax losses from prior tax years need to be reviewed on a case-by-case basis.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Domestic corporations are taxed on worldwide income. Domestic corporations are those incorporated under Colombian law. Branches of foreign corporations are taxed on Colombian-source income only.

**Rate of Corporate Tax.** Effective from the 2008 tax year, the tax rate for both domestic corporations and branches of foreign corporations is 33%.

Effective from 1 January 2007, a special reduced income tax rate of 15% applies to legal entities that qualify as Industrial Free Trade Zone Users. Commercial Free Trade Zone Users are subject to the general income tax rate. Qualification as a Free Trade Zone User may be obtained through any of the following actions:

- Incorporation of a new company within an existing Free Trade Zone;
- Relocation of an existing company to a Free Trade Zone and the satisfaction of certain employment and investment conditions; and
- Qualification of real estate as a Permanent Special Free Trade Zone and the satisfaction of certain employment and investment conditions.

Certain tax credits are available (see *Foreign Tax Relief* below).

**Capital Gains.** Gains derived from the sale of fixed assets and other capital gains are taxed separately from ordinary income, but are subject to the same tax rate as other income. The portion of a gain corresponding to previous depreciation is treated as ordinary income. Gains derived from the sale of assets that are sold within two years after the acquisition date are treated as ordinary income.

Beginning with the 2007 tax year, offsetting capital gains against ordinary income, or vice versa, is not allowed.

**Administration.** The tax year is the calendar year.

During the last week of each December, the Colombian government sets the due dates for the filing of income tax returns and the payment of taxes due. Tax payments are made in five installments between February and October for Greater Taxpayers (large corporations that satisfy certain conditions set by the tax authorities), and in two installments between April and June for other legal entities. Advance payments for the current tax year, which generally represent 75% of the income tax payable for the prior tax year after withholdings, must be made with these installments.

Interest on late payments of taxes is accrued at the effective rate of usury certified by the Superintendency of Finance for the corresponding month of delay. A penalty for late filing is imposed on the amount of tax assessed in the corresponding tax return at a rate of 5% for each month or a fraction of a month. The penalty for amending a return is 10% of the difference between the amount shown on the original tax return and the correct amount.

**Dividends.** Dividends paid between domestic corporations are not subject to tax if the company generating the profits out of which the dividends are paid is taxed on these profits in Colombia (temporal differences can affect this calculation). If the profits were not taxed at the corporate level, the dividends are included in the income tax return of the recipient of the dividends and taxed at the regular corporate income tax rate of 33%.

In general, a 0% withholding tax is imposed on dividends distributed to foreign investors on or after 1 January 2007 that are paid out of profits taxed at the corporate level. Dividends paid out of profits that were not taxed at the corporate level are subject to tax at the applicable corporate income tax rate. A 7% withholding tax rate applies to dividends declared in the 2006 and prior tax years that were reinvested in Colombia and subsequently remitted to nonresidents within five years after the date of reinvestment. If such dividends are reinvested for a period of five years or more, they are not subject to tax.

Any excess paid over the par value for shares (a share premium) is taxable to the company in the year in which the share premium is distributed as a dividend.

**Foreign Tax Relief.** For domestic corporations, a credit for foreign taxes paid on foreign-source income is granted, up to the amount of Colombian tax payable on the foreign-source income.

Effective from the 2007 tax year, an indirect tax credit is granted for foreign taxes paid by a foreign company that distributes dividends to Colombian shareholders or quota holders. This tax credit equals the amount resulting from the application of the income tax rate of the foreign country to the amount of the distributed dividends. The sum of the tax credit and indirect tax credit may not exceed the income tax payable in Colombia on such dividends.

### **C. Determination of Taxable Income**

**General.** Taxable income is determined in accordance with the following calculation: gross income, minus nontaxable income, returns, rebates and discounts, equals net income, minus costs and expenses, equals taxable income.

In general, to be deductible, expenses must be related to the activity that generates taxable income and must be proportional and necessary with respect to the productive activity of the taxpayer. Some limitations and prohibitions may apply to the deductibility of certain expenses.

Payments to entities resident outside Colombia are deductible if they meet the general rules above and, for expenses related to Colombian-source income, if the applicable withholding tax is paid. If no tax withholding is required, the expenses are allowed

as deductions, up to a maximum of 15% of the taxpayer's net income before taking into account such expenses. Expenses incurred abroad that are related to foreign-source income subject to income tax in Colombia are deductible if the general requirements are met, even if withholding tax is not imposed.

Branches or offices of foreign companies may deduct the following types of payments made to their foreign related party if the applicable withholding tax is paid: royalties; commissions that are related to the acquisition of raw materials or goods; administration fees; and payments for the use or acquisition of intangible property. Interest and other financial expenses resulting from liabilities owed to affiliate companies are generally not deductible.

Overhead expenses are deductible if they are related to services rendered and if they are supported by transfer-pricing studies. It is usually difficult to satisfy these conditions and, as a result, overhead expenses are generally not deductible. Under Law 788 of 2002, transactions subject to transfer-pricing rules (see Section E) are not subject to the limitations provided in the Tax Code for costs and expenses in transactions involving related parties. Consequently, transactions with foreign related parties that are subject to the transfer-pricing rules are deductible for a Colombian company, even if such payments are not subject to withholding tax. Nevertheless, the limitation provided in Article 122 of the Tax Code (up to 15% of the net income computed before taking into account such expenses) applies.

Income generated from the following activities is exempt from income tax: seismic engineering services for oil and gas industries; hotels (new and remodeled hotels); software and medical patents developed in Colombia; fluvial transportation; and energy generated from wind sources. The assets used in these activities are not included in the base for determining presumptive income (see *Presumptive Income* below).

**Presumptive Income.** Under the Colombian tax law, the tax base is the higher of actual taxable income (see *General* above) or minimum presumptive income, which is equal to 3% of the net equity as of 31 December of the preceding tax year. Certain assets may be excluded from this calculation.

The amount of income tax payable after tax credits may not be less than 75% of the income determined under the presumptive income rules, before taking into account tax credits.

The excess of the presumptive income tax over ordinary net income may be amortized over the following five years.

**Inventories.** Inventories are generally valued using the permanent inventory method.

**Provisions.** Provisions are not allowed as deductions in determining taxable income, except for provisions for accounts receivables and contributions to pension funds, which are subject to special tax rules.

**Depreciation.** Depreciation may be calculated using the straight-line method, declining-balance method or other recognized method authorized in advance by the tax authorities.

Individual assets purchased for up to Col\$1,049,000 (approximately US\$456) in 2007 may be fully depreciated in the year of acquisition.

The general categories of useful lives established by the tax law are the following: buildings, including pipelines, 20 years; machinery and equipment, 10 years; and vehicles and computers, 5 years. If machinery and equipment are used daily in shifts in excess of a regular eight-hour schedule, a taxpayer may request an additional 25% on the depreciation rate for each additional eight-hour shift and a corresponding proportion for a fraction of such shift. Land is not depreciable.

In Colombia, the same depreciation method must be used for both tax and accounting purposes.

**Amortization.** In general, amortization of ordinary and necessary investments used for the purposes of the business, including intangibles (for example, goodwill and know-how) is allowed. Amortization must be claimed over a minimum period of five years. Shorter periods may apply for investments related to specific projects with a shorter duration, if properly justified.

Amortizable costs and expenses for the oil industry may be amortized using the straight-line method over five years, unless a shorter period can be justified. Alternatively, they can be amortized using the units-of-production method. If investments in exploration are unsuccessful, the costs and expenses may be deducted in the year in which this is determined or in the following two years.

**Special Deduction for the Acquisition of Fixed Assets.** Effective from 1 January 2007, companies may deduct 40% of the value of “productive tangible fixed assets” purchased or acquired, including assets under leasing agreements with an irrevocable purchase option. “Productive tangible fixed assets” are tangible assets that meet both of the following conditions: they are directly and permanently used in the productive activity of the company; and they can be depreciated or amortized for tax purposes. A company claiming this special deduction may not use audit benefits to achieve an early closing of the tax return review. (A taxpayer may apply for audit benefits to obtain an early statute of limitations for its tax return if it satisfies certain conditions.) Assets considered for the special deduction may be depreciated only through the straight-line method of depreciation.

**Relief for Tax Losses.** Tax losses generated after the 2006 tax year may be carried forward without a time limitation. The tax rules currently in force do not impose any limitations on the amount of tax losses available for offsetting against taxable income each tax year. The tax authorities have indicated that tax losses available as of 31 December 2006 are covered by the prior rules, which provided for losses to be carried forward for period of up to eight years and for only 25% of those tax losses available for offset each tax year.

Additional restrictions apply to the transfer of losses in mergers or spin-offs (tax free events for Colombian tax purposes). The surviving entity can offset losses originated in the merged entities,

but only up to the percentage of its equity participation in the merged entity's equity. Similar rules apply to company spin-offs. Tax losses incurred do not affect the entity's presumptive income for the respective tax year.

Transfers of tax losses in mergers and spin-offs are available only if the economic activity of the companies involved remains the same after the merger or spin-off.

**Inflation Adjustment.** Law 1111, 2007 eliminated the application of annual inflation adjustments for income tax and financial reporting purposes. Instead, an optional tax readjustment of fixed assets may be applied, equal to the percentage certified by the government for the adjustment of the tax value unit (UVT). For 2008, one UVT equals Col\$22,054. The UVT for 2007 was increased by a percentage of 4.87%. The readjustment affects the tax basis for the transfer of fixed assets, presumptive income and the determination of net equity. Although the inflation adjustments were eliminated, accumulated adjustments can be depreciated.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax; imposed, unless expressly excluded by law, on sales of movable assets; on imports of movable corporeal assets and on most services	
General rate	16%
Products and services previously excluded from VAT, such as corn, wheat and flour	10%
Mobile telephone services (cellular and other kinds of wireless communication services)	20%
Games of chance (other than lotteries)	5%
Luxury automobiles	35%
Nonluxury automobiles, trucks, motorcycles and similar items	20%/25%
Equity tax; applicable for 2007, 2008, 2009 and 2010 only; applied to net equity held on 1 January 2007; tax is imposed on legal entities and individuals who owned net equity (gross equity less debts, measured in tax terms) in excess of Col\$3,000,000,000 on 1 January 2007; shares in Colombian companies are excluded from the tax base; the tax is neither deductible nor creditable; annual rate	1.2%
Stamp tax; applies to public and private documents with a value exceeding Col\$126,000,000 (for 2007 tax year); tax rate is reduced 0.5% each year until 2010	
2007	1.5%
2008	1%
2009	0.5%
2010	0%





Nature of Tax	Rate
Solidarity Fund; payable by employer on the monthly ordinary salary of the employee; contribution required only for employees who earn a monthly salary greater than 4 minimum wages (approximately US\$754); subject to same maximum limitation and integral salary rules as pension contributions; rates vary according to the amount of monthly salary earned by employee Employees earning up to 16 minimum wages (US\$3,107)	1%
Employees earning monthly between 16 and 17 minimum wages (US\$3,107 to US\$3,205)	1.2%
Employees earning between 17 and 18 minimum wages (US\$3,205 to US\$3,394)	1.4%
Employees earning between 18 and 19 minimum wages (US\$3,394 to US\$3,582)	1.6%
Employees earning between 19 and 20 minimum wages (US\$3,582 to US\$3,771)	1.8%
Employees earning between 20 and 25 minimum wages (US\$3,771 to US\$4,714)	2%
Professional risk; payable by employer on monthly ordinary salary; rate depends on a legally established scale based on the degree of risk represented by the economic activity of the company; the Social Security office makes the classification at the time of enrollment; subject to same maximum limitation and integral salary rules as pension contributions	0.348% to 8.7%
SENA, ICBF, Family Compensation Fund (payroll taxes); payable by employer on the monthly ordinary salary earned by the employee; no ceiling applies; subject to same integral salary rules as pension contributions	9%
Custom duty, on Cost, Insurance Freight (CIF) value; general rates	5% to 20%
Real estate tax; municipal tax imposed on the ownership of land or immovable property; tax rate is applied to the commercial value or cadastral value of the property; rate set by the jurisdictions and varies according to the location or use of the property; general range of rates	0.4% to 3.5%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** A controlled exchange market and a free market exist. The controlled exchange market primarily covers foreign-trade operations (imports and exports), external

indebtedness, foreign investment in Colombia and Colombian investment abroad. Commercial banks and financial institutions administer the controlled exchange market.

Exchange operations that are not covered by the controlled market are conducted through the free market. These operations include the purchase of foreign currency that is used to open free-market bank accounts abroad.

Foreign investors may receive abroad without limitation annual profits derived from an investment that is registered with the Colombian Central Bank (Banco de la República de Colombia).

**Controlled Foreign Companies.** Colombia does not have special measures for controlled foreign companies (CFCs).

**Debt-to-Equity Rules.** Colombia does not have any measures with respect to thin-capitalization.

**Transfer Pricing.** A transfer-pricing system was adopted in Colombia, effective from 1 January 2004. This regime includes several of the methods contained in the Organization for Economic Cooperation and Development (OECD) rules. However, as a result of an opinion of the Constitutional Court, the OECD guidelines may not be directly referred to for purposes of interpretation of the Colombian transfer-pricing rules. Law 863, 2003 introduced changes to the original transfer-pricing rules. Under the revised rules, local operations between related companies established in Colombia are not covered by the rules. The reform also contained measures with respect to the following:

- Parties who should prepare and send the evidentiary documentation and information reports regarding operations with related parties (gross equity higher than 5,000 minimum wages as of the last day of the tax year or gross revenues for the year in excess of 3,000 minimum wages); and
- Penalties for not meeting filing requirements, submitting erroneous or incomplete reports or failing to meet other requirements.

Guidelines with respect to a list of tax havens and other matters are still pending.

**Legal Stability Contracts.** To promote new investment in Colombia, Law 963, 2005 allows investors to enter into legal stability contracts. Under this type of contract, an investor in Colombia can be guaranteed that, during the term of the contract (3 to 20 years), the investment will not be adversely affected by modifications made to existing laws, regulations or rulings. In consideration for such guarantee, the investor pays a contribution equal to 1% of the amount invested during the year. The rate of the contribution is reduced to 0.5% if the project is in the preoperational stage.

In general, direct taxes (income tax and equity tax) are covered by the contract. However, value-added tax, taxes created under a state of emergency and territorial taxes (state and municipal taxes) may not be covered by the contract. The contract may also cover other items, such as corporate laws, private laws and certain utilities' regulations. These may include official doctrines issued by the tax authorities.

To enter into a legal stability contract, the investor needs to submit a proposal to a government committee for its approval, including

a detailed list of the laws and regulations covered by the agreement, the description of the investment project and the term of the project. Additional requirements are provided by the law.

## F. Tax Treaties

Colombia has entered into a double tax treaty with Bolivia, Ecuador, Peru and Venezuela which follows the Andean Pact Model for Avoidance of Double Taxation (a multilateral source tax treaty). Venezuela withdrew from the Andean Community in 2006. As a result, the provisions contained in this treaty are no longer applicable between Colombia and Venezuela.

Colombia has entered into double tax treaties covering certain international air transportation services with Argentina, Chile, France, Germany, Italy, the United States and Venezuela.

On 1 March 2005, Colombia signed a double tax treaty with Spain, which is based on the Organization for Economic Cooperation and Development (OECD) model convention. This treaty has been enacted under Law 1082 of 2006. It will enter into force after the Constitutional Court completes the respective constitutional review, and the corresponding ratification notices are exchanged by the governments.

On 19 April 2007, the Colombian government signed a double tax treaty with Chile. On 26 September 2007, it signed a similar treaty with Switzerland. Both of these treaties are also based on the OECD model convention. The treaties are pending congressional discussions and approval, as well as the review of the Constitutional Court. These processes could last approximately two years.

Colombia is currently negotiating double tax treaties with Canada and Venezuela.

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## COMMONWEALTH OF INDEPENDENT STATES

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*See Azerbaijan, page 56; Belarus, page 71, Georgia, page 289; Kazakhstan, page 488; Moldova, page 617; Russian Federation, page 799; Ukraine, page 982; and Uzbekistan, page 1057. For inquiries concerning Turkmenistan, contact Erlan Dosymbekov in the Kazakhstan office. For other republics of the Commonwealth of Independent States (Armenia, Kyrgyzstan and Tajikistan), contact Petr V. Medvedev in the Moscow office.*

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**A. At a Glance**

Corporate Income Tax Rate (%)	38 (a)
Capital Gains Tax Rate (%)	38 (b)
Branch Tax Rate (%)	38 (a)
Withholding Tax (%)	
Dividends	20 (c)
Interest	20 (d)
Royalties from Patents, Know-how, etc.	20
Payments for Noncommercial Services and Activities	20
Revenues Earned by Certain Foreign Companies	7.7/20 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is 1% of turnover (unless an exemption applies). The corporate income tax rate is 30% for agricultural companies.
- (b) In certain circumstances, the tax is deferred or reduced (see Section B).
- (c) This tax also applies to directors' fees, nondeductible expenses and adjustments of profits following a tax examination. For directors' fees, the rate is 22%.
- (d) Interest paid to a foreign bank is not subject to withholding tax.
- (e) For details, see Section B.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Congolese companies are taxed on the territoriality principle. As a result, Congolese companies carrying on a trade or business outside Congo are not taxed in Congo on the related profits. Congolese companies are those registered in Congo, regardless of the nationality of the shareholders or where the company is managed and controlled. Foreign companies engaged in activities in Congo are subject to Congolese corporate tax on Congolese-source profits only.

**Tax Rates.** The regular corporate income tax rate is 38%.

The minimum tax payable is 1% of the annual turnover and cannot be less than FCFA 1 million (or FCFA 500,000 if turnover is

less than FCFA 10 million a year). A 2% minimum tax is payable by companies that incur tax losses in two consecutive years. It appears that the 2% rate is applied to the sum of gross turnovers and products and benefits realized by the company in the most recent year in which it earned a profit. In general, the 2% tax is not deductible for corporate income tax purposes. However, in the company's first profit-making year after incurring the losses, one-half of the 2% tax is deductible.

The corporate income tax rate is 30% for agricultural companies.

A withholding tax at a rate of 7.7% is imposed on the turnover of foreign companies without a registered branch in Congo that are engaged in legally authorized activities there and on the turnover of foreign oil companies. A 20% withholding tax is imposed on income sourced in Congo that is derived by foreign companies not engaged in activities in Congo.

Corporations may apply for various categories of priority status and corresponding tax exemptions. The priority status varies depending on the nature of the project and the level of investments.

The Charter of Investments may grant a tax exemption for a three-year period for new activities in industry, agriculture, forestry and mining. In addition, under the General Tax Code, a tax exemption for a two-year period may be granted for such new activities.

**Capital Gains.** Capital gains are taxed at the regular corporate rate. The tax, however, can be deferred if the proceeds are used to acquire new fixed assets in Congo within three years or in the event of a merger.

If the business is totally or partially transferred or discontinued, only one-half of the net capital gains is taxed if the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gains is taxed if the event occurs five years or more after the business is begun or purchased. The total gain is taxed, however, if the business is not carried on in any form by any person.

**Administration.** The fiscal year extends from 1 January to 31 December. Tax returns must be filed before 1 May.

Companies must pay the minimum tax before 15 March, and corporate tax must be paid in four installments by 15 February, 15 May, 15 August and 15 November. Each installment must be equal to 20% of the previous year's tax. The balance of tax due must be paid by the following 30 April.

A 50% penalty is assessed for late payment of tax.

**Dividends.** Dividends paid are subject to a 20% withholding tax. Resident corporations are taxed on the gross dividend; a corresponding 20% tax credit is available for double tax relief.

After three years, profits credited to the noncompulsory reserve are considered to be dividends and are accordingly subject to the 20% withholding tax on dividends.

A parent corporation may exclude the net dividends received from a Congolese or foreign subsidiary if the following conditions are satisfied:

- The parent company is a Congolese joint stock company or limited liability company that holds 30% or more of the capital of the subsidiary, which is also a joint stock company or limited liability company; and
- The subsidiary carries on only industrial, agricultural, mining, forestry, large-scale fishing or stock-breeding activities.

No withholding credit is allowed if the net dividends are excluded.

A Congolese joint stock company or limited liability company may exclude 90% of the net dividends received from a joint stock company or limited liability company located in Congo or another Central African Economic and Monetary Community (CEMAC) country if the parent company holds 25% or more of the capital of the payer of the dividends.

**Foreign Tax Relief.** In general, foreign tax credits are not allowed; income subject to foreign tax that is not exempt from Congolese tax under the territoriality principle is taxable net of the foreign tax. A tax treaty with France, however, provides a tax credit on dividends.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the standard statements of the Organization for Harmonization of Business Law in Africa (OHADA) treaty. The members of OHADA are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal and Togo.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Head office overhead or remuneration for services paid to non-residents that exceeds 20% of taxable income before the deduction of such items;
- Head office fees or remuneration for certain services (studies and technical assistance) paid to nonresidents by companies engaged in building and public works, by engineering firms and by accounting firms, to the extent that the expenses exceed 2% of turnover;
- Royalties from patents, brands, models or designs paid to a non-resident corporation participating in the management of, or owning shares in, the Congolese corporation;
- Interest paid to a shareholder in excess of a 7.75% annual rate and, if the shareholder is in charge of management, interest on the portion of the loan exceeding one-half of the capital stock;
- Commissions and brokerage fees exceeding 5% of purchased imports;
- Certain specific charges, gifts, subsidies and penalties;
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director); and
- Corporate income tax.

**Inventories.** Inventory is normally valued at the lower of cost or market value.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss

or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are likely to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Tax Depreciation.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by tax law. The following are some of the specified annual rates.

Asset	Rate (%)
Commercial and industrial buildings	5
Office equipment	15
Motor vehicles	20 to 33.33
Plant and machinery	10 to 33.33

Heavy new assets acquired for manufacturing, transformation, transport and handling qualify for a special depreciation allowance at a rate of 40% in the year of acquisition if the assets are used only in industrial, forestry or agricultural activities, if they can be used for at least three years and if the total value of such newly acquired assets exceeds FCFA 40 million.

**Relief for Tax Losses.** Losses may be carried forward for three years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** There is no fiscal integration system in Congo equivalent to a consolidated filing position.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax	18.9
Business activity tax ( <i>patente</i> ), calculated based on the nature of the business, the value of equipment and the number of employees	Various
Registration duties, on transfers of real property or businesses	4 to 15
Payroll taxes, paid by employer	
On salary up to FCFA 1.5 million	5
On portion of salary exceeding FCFA 1.5 million	4
Social security contributions, on annual salaries; paid by	
Employer	
Family allowance contribution	10.035
Work accident insurance	2.25
Old-age pension	8
Fond National de Construction	2
Employee	
Old-age pension	4
Nationale de l'emploi et de la main d'oeuvre (Onemo)	0.5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Congolese currency is the CFA franc. The fixed exchange rate for the CFA franc is FCFA 655,957 = €1.



Exchange-control regulations exist in Congo for financial transfers outside the franc zone, which is the monetary zone including France and its former overseas colonies.

**Transfer Pricing.** The Congolese tax law contains the transfer-pricing measures described below.

Amounts paid by a Congolese company to a company or a group of companies located outside Congo are considered indirect transfers or profits if the payer is dependent de jure or de facto on the recipient of the payments and if the tax authorities establish that the payments are excessive or unjustified. This measure applies to certain transactions, including the following:

- Overcharges for purchases;
- Payments of excessive royalties;
- Loans that are interest-free or have unjustifiable rates;
- Discounts of debts; and
- Advantages granted out of proportion with the benefit provided by a service provider.

Payments for the use of patents, marks, drawings and models, interest payments and payments for services made by a Congolese company to a nonresident company located in a country with low or no taxation, are considered indirect transfers of benefits unless the Congolese company proves that the payments correspond to real operations and that they are not excessive.

## F. Treaty Withholding Tax Rates

The withholding rates under a treaty with France are listed in the following table.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
France	15/20 (a)	0 (b)	15
Nontreaty countries	20	20	20

- (a) The 15% rate applies if the recipient of the dividends is a French company that holds 10% or more of the capital of the Congolese company. The 20% rate applies to other dividends.
- (b) Interest is subject to tax in the recipient's country. Withholding tax is not imposed in the country of source.

## COSTA RICA

(Country Code 506)

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	0/30 (a)(b)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	15 (c)
Interest	15 (d)(e)
Royalties from Know-how and Technical Services	25 (d)
Transportation and Telecommunications	8.5 (d)(f)
Salaries and Pensions	10 (d)
Fees and Commissions	15 (d)
Reinsurance	5.5 (d)(f)
News Services, Videos and Films	20 (d)(f)
Other	30 (d)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	3/5 (g)

(a) The 30% rate is reduced to 10% or 20% for companies whose annual gross income does not exceed specified amounts (see Section B).

(b) See Section B.

- (c) This withholding tax applies to dividends paid to nondomiciled business entities and to domiciled and nondomiciled individuals (see Section B). The withholding tax is considered a final tax.
- (d) This is a final withholding tax that is imposed on nondomiciled companies and nondomiciled individuals.
- (e) Interest paid by qualified banks and financial institutions registered with the Banco Central de Costa Rica (central bank) is exempt from tax.
- (f) Nondomiciled companies engaged in these types of activities through a permanent establishment in Costa Rica that do not file an income tax return may be subject to an imputed amount of taxable income equivalent to 10.5%, 15% or 30% of their total gross income derived in Costa Rica. The applicable percentage depends on the type of business activity. Imputed taxable income is subject to the ordinary corporate income tax rate. For further details, see Section C.
- (g) Industrial companies may carry forward net operating losses incurred in their first five years of operations for five years, and they may carry forward net operating losses incurred in subsequent years for three years. Agricultural companies may carry forward net operating losses for five years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** The Costa Rican tax system is based on the territorial principle. As a result, income derived from Costa Rican sources is subject to tax.

**Corporate Income Tax Rates.** The corporate tax rate is 30% for resident and nonresident companies. Companies with annual gross income not exceeding ₡31,043,000 (approximately US\$59,698) are subject to an income tax rate of 10%. Companies with annual gross income between ₡31,043,000 and ₡62,444,000 (approximately US\$120,084) are subject to an income tax rate of 20%.

Companies operating under the Free Trade Zone Regime benefit from a 100% income tax exemption for a period of 8 to 12 years, and a tax reduction of 50% for the following 4 or 6 years, depending on the location of the company. (Companies located in specified “less developed areas” may qualify for a longer exemption period.) The Ministry of the Economy and Industry published a listing of the counties that qualify as “less developed areas” in the Social Development Index for Counties (Executive Decree No. 30006-PLAN, published in the *Official Gazette* of 15 January 2002).

**Capital Gains.** Capital gains are taxable and capital losses are deductible if they result from the transfer of depreciable assets or from the transfer of nondepreciable assets in the ordinary course of a trade or business. Taxable capital gains are treated as ordinary income and are subject to tax at the normal corporate income tax rate.

**Administration.** The statutory tax year runs from 1 October through 30 September. Companies must file annual corporate income tax returns and pay any tax due within two months and fifteen days after the end of the tax year. Subsidiaries of foreign companies may request permission to use the parent company’s fiscal year in filing their returns. In addition, certain agricultural companies may use the calendar year or other fiscal year.

The current year tax liability must be paid in quarterly installment payments, which are based on the preceding year’s income tax paid or the average of the last three years tax liability, whichever is higher. If a company did not file a return for the last three years, the installment payments are calculated based on the tax liability from the last year a return was filed. New companies must make

quarterly payments based on their first-year projected income, which must be reported to the tax authorities on or before the last day of January. If no projected income is reported, the tax authorities determine the quarterly tax payments based on an imputed income amount.

**Dividends.** Dividends paid between resident corporations, limited liability companies and partnerships with stock are not taxable. A 15% withholding tax is imposed on dividends paid to domiciled and nondomiciled individuals or to nondomiciled business entities. If the shares on which dividends are paid were purchased through a local stock exchange, the withholding tax rate is reduced to 5%. Distributions by companies of their own shares are not taxable. Under the Income Tax Law, domiciled companies include companies incorporated in Costa Rica and companies that have a permanent establishment in Costa Rica.

**Foreign Tax Relief.** Certain types of foreign-source income (for example, dividends, interest, royalties and commissions) may qualify for foreign tax relief. The tax authorities may allow a total or partial exemption from Costa Rican income tax corresponding to the foreign-source income if a company can establish that it is not entitled to a foreign tax credit or deduction in the source country for the Costa Rican income tax paid on such income, or that such credit or deduction is less than the tax due in Costa Rica.

### C. Determination of Trading Income

**General.** Income tax is determined in accordance with International Accounting Standards (IAS), subject to adjustments required under the Costa Rican Income Tax Law and general resolutions issued by the tax authorities. Taxable income includes all income derived from Costa Rican sources, such as income from industrial, agricultural and trade activities in Costa Rica, income from services rendered in Costa Rica and income derived from real estate transactions, assets, capital, goods and rights invested or used in Costa Rica.

**Imputed Income.** The tax authorities may assess imputed income in the cases described below.

*Nondomiciled Companies That Do Not File Tax Returns.* Nondomiciled companies engaged in certain types of activities in Costa Rica through a permanent establishment that do not file income tax returns are subject to an imputed income assessment equal to a specified percentage of their Costa Rican gross income, unless they provide evidence of a lower amount of actual income. For example, documentation supporting an allocation of income between Costa Rica and other countries would prove that all income is not Costa Rican source. The amount of the imputed income assessment is subject to tax at the normal income tax rate. The following are the applicable income tax percentages for determining imputed income.

Activity	Rate (%)
Transport and telecommunications	15
Reinsurance	10.5
Media, cinema and international news	30

*Airlines, Maritime Shipping and Transportation Companies.* Airlines, maritime shipping and transportation companies may enter

into an agreement with the tax authorities to compute Costa Rican taxable income using a special formula based on the company's worldwide and local revenues.

**Loan and Financing Transactions.** Unless the taxpayer provides evidence to the contrary, loan and financing transactions are deemed to derive a minimum amount of interest based on the highest active interest rate fixed by the Banco Central de Costa Rica (central bank) for lending and financial transactions or, if this rate is not available, on the average market rate being charged in the Costa Rican banking system. The tax authorities do not allow any exceptions to this rule unless the parties entered into a formal written loan or financing agreement.

**Inventories.** The Costa Rican Income Tax Regulations provide that acquisition cost must be used to record assets. The acquisition cost may be computed using several valuation methods, such as the first-in, first-out (FIFO), last-in, first-out (LIFO) and weighted-average cost.

**Provisions.** In general, provisions, including provisions for contingent liabilities such as doubtful accounts and severance pay, are not deductible expenses. However, actual payments of such liabilities are considered to be deductible expenses.

**Tax Depreciation.** Depreciation may be computed using the straight-line or the sum-of-years' digits method. The tax authorities may allow a special accelerated depreciation method in certain cases. The tax authorities may authorize other methods based on the type of asset or business activity. The method chosen must be applied consistently. Depreciation is computed based on the useful life of the asset as specified in the Income Tax Regulations. The following are some of the straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	2/4/6
Plant and machinery	7/10/15
Vehicles	10/15/34
Furniture and office equipment	10
Tools	10

**Relief for Losses.** Industrial companies may carry forward net operating losses incurred in their first five years of operation for five years and they may carry forward net operating losses incurred in subsequent years for three years. Agricultural companies may carry forward net operating losses for five years. Net operating losses may not be carried back.

**Groups of Companies.** Costa Rican law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Sales tax	13
Real estate transfer tax	1.5
Vehicle transfer tax	2.5
Customs duties	
Agricultural products; average rate	12.72

<b>Nature of Tax</b>	<b>Rate (%)</b>
Industrial products; average rate	4.69
Certain raw materials and machinery and equipment (Certain specified goods and merchandise are subject to higher rates of customs duty.)	0
Real estate tax (assessed and collected by the municipalities)	0.25
Payroll taxes (withheld by employers; paid by employee; rate depends on compensation level)	0/10/15
Social security contributions:	
Employer	26
Employee	9
Municipal taxes (varies by municipality)	Various

### **E. Foreign-Exchange Controls**

The currency in Costa Rica is the colon (¢). As of 11 October 2007, the exchange rate of the colon against the U.S. dollar was ¢520.80 = US\$1.

No restrictions are imposed on foreign-trade operations or foreign-currency transactions.

### **F. Tax Treaties**

Costa Rica has not entered into any income tax treaties with other countries. However, Costa Rica has entered into a tax information exchange agreement with the United States.

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## **CÔTE D'IVOIRE (IVORY COAST)**

(Country Code 225)

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*This chapter reflects changes introduced by the 2008 Financial Law, which was enacted on 27 January 2008.*

### **A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	10/12/18 (c)
Directors' Fees and Nondeductible Expenses	12
Interest	18 (d)

Royalties from Patents, Know-how, etc.	20
Payments for Services	20 (e)
Branch Remittance Tax	12 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) For details concerning the minimum tax, see Section B.  
 (b) See Section B.  
 (c) For details concerning these rates, see Section B.  
 (d) The withholding tax rate is 9%, 13.5% or 16.5% in certain cases if the income is received through a bank or if the income is deposited by a holding company. The withholding rate on "lots" (exceptionally high bond discounts given only for certain specified bonds selected at random) is 25%. The withholding tax is imposed on the amount of the discount.  
 (e) Applicable to payments by resident companies for services rendered by non-residents who do not maintain a professional office in Côte d'Ivoire.  
 (f) On one-half of the before-tax profit (18% if the profit is exempt from corporate tax). See Section B.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are taxed on the territoriality principle. As a result, companies carrying on a trade or business outside Côte d'Ivoire are not taxed in Côte d'Ivoire on the related profits. Resident companies are those registered in Côte d'Ivoire, regardless of the nationality of the shareholders or where they are managed and controlled. Foreign companies with activities in Côte d'Ivoire are subject to corporate tax on local-source profits.

**Tax Rates.** Under the 2008 Financial Law, the regular corporate income tax rate is now 25%.

The minimum tax is 0.5% of turnover. For oil-producing, electricity and water-producing companies, the rate is reduced to 0.1%. The rate is reduced to 0.15% for banks and financial companies and for insurance companies. The minimum tax may not be less than FCFA 2 million or more than FCFA 15 million (until 2007). New corporations are exempt from the minimum tax for their first fiscal year.

Profits realized in Côte d'Ivoire by branches of foreign companies are deemed to be distributed and therefore are subject to a branch withholding tax on one-half of the before-tax profit at a rate of 12% (18% if the profit is exempt from corporate tax).

Corporations may apply for various categories of priority status and corresponding tax exemptions. Priority status varies depending on the nature of the project and the level of investments. Corporate tax reductions and temporary tax exemptions are granted to new industrial businesses for investments in industrial buildings and building sites, land for development, and industrial and agricultural establishments.

**Capital Gains.** Capital gains are taxed at the regular corporate rate. The tax, however, can be deferred if the proceeds are used to acquire new fixed assets in Côte d'Ivoire within three years or in the event of a merger (or other acquisition).

If the business is totally or partially transferred or discontinued, only one-half of the net capital gain is taxed if the event occurs less than five years after the start-up or purchase of the business,

and only one-third of the gain is taxed if the event occurs five years or more after the business is begun or purchased.

The total gain is taxed, however, if the business is not carried on in any form by any person.

Capital gains derived by holding companies are exempt or are taxed at a rate of 20% if certain conditions are satisfied.

**Administration.** The tax year is from 1 January to 31 December. Tax returns must be filed by 30 April of the year following the tax year.

Companies must pay corporate income tax in three equal installments, which are due on 20 April, 20 June and 20 September of the year following the tax year.

Late payments are subject to interest of 0.5% per month and a penalty of 5%.

**Dividends.** Dividends paid by listed companies out of profits taxed at the 25% corporate tax rate are subject to a 10% withholding tax. A 12% withholding tax is imposed on dividends paid by other companies out of profits taxed at the 27% corporate tax rate. Dividends paid out of profits exempt from corporate tax and certain other dividends are subject to withholding tax at a rate of 18%.

A parent company may exclude up to 95% of dividends received from a 10%-owned subsidiary. If less than a 10% interest is held, a listed company may exclude 90% of the dividends received while an unlisted company may exclude 50%.

A parent company does not have to withhold tax when it distributes dividends that consist of dividend income it received from a subsidiary.

**Foreign Tax Relief.** In general, foreign tax credits are not allowed; income subject to foreign tax that is not exempt from tax in Côte d'Ivoire under the territoriality principle is taxable, net of the foreign tax. However, a tax treaty may provide for a tax credit.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to the Accounting System of the Organization for African Business Law Harmonization. Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Gifts;
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director);
- Subsidies;
- Corporate tax; and
- Penalties.

Services fees and royalties paid by resident companies to nonresident companies are deductible if the following conditions are satisfied:

- The payer proves that the payments are related to real operations and that the amount of the payments is normal; and
- The amount of the payments does not exceed 5% of the turnover or 20% of the overhead of the payer.



Payments to resident companies are also subject to the same two conditions mentioned above.

Under certain tax treaties of the Côte d'Ivoire, amounts paid to nonresident companies are deductible for tax purposes based on the same conditions as those applicable to payments to resident companies. Even if such treaties apply, the payer must satisfy the two conditions mentioned above in order to deduct the payments.

The deduction of services fees and royalties paid by resident companies to other resident companies is subject to the second condition mentioned above (5% of the turnover and 20% of the overhead). As a result, the nondiscrimination clause provided for by certain tax treaties does not apply, and services fees and royalties paid by resident companies to nonresident companies are deductible under the conditions mentioned above.

**Inventories.** Inventory is normally valued at the lower of cost or market value. Cost must be determined on a weighted-average cost price method. A first-in, first-out (FIFO) basis is also generally acceptable.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at the following rates specified by the tax law.

Asset	Rate (%)
Buildings	5
Light construction	10
Loud machinery	10
Stationary machinery	20
Fixtures	10
Office and home chattels	10
Office equipment	20 to 25
Motor vehicles	33
Other specified vehicles and engines	20 to 25
Computers	50

**Relief for Tax Losses.** Losses may be carried forward five years. Losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** The law does not contain any provision for the fiscal integration of related companies equivalent to a consolidated filing position.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on goods and services sold in Côte d'Ivoire	18
Turnover tax (tax on banking operations), on interest paid to and services rendered by banks and financial companies	10
Withholding tax, on amounts invoiced by importers, producers and sellers to persons subject to commercial or agriculture tax (entitles the buyer to a credit against withholding tax or VAT payable on its sales)	Various
Business activity tax ( <i>patente</i> ), based on the level of business activity and the rental value of tangible assets	Various
Registration duties, on transfers of real property or businesses	1 to 10
Special tax on subcontractors of petroleum companies; a global tax including income tax, payroll taxes, a tax on shares, a national solidarity tax and an insurance tax; on taxable turnover	6.056
Payroll tax, paid by employers on salaries of Employees from Côte d'Ivoire	2.8
Expatriates	12
Social security contributions	
Retirement, on monthly salaries up to FCFA 1,647,315; paid by Employer	4.8
Employee	3.2
Family allowances, on monthly salaries up to FCFA 70,000; paid by employer	5.75
Industrial injuries, on monthly salaries up to FCFA 70,000; paid by employer	2 to 5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Exchange control regulations apply to financial transfers outside the franc zone, which is a monetary zone including France and its former overseas colonies.

**Transfer Pricing.** Côte d'Ivoire has transfer-pricing rules. The only acceptable transfer-pricing method is uncontrolled price. It is possible to reach transfer-pricing agreements in advance with the tax authorities.

## F. Treaty Withholding Tax Rates

Côte d'Ivoire has signed a multilateral tax treaty with the other members of the West African Economic Community (CEAO), which are Burkina Faso, Mali, Mauritania, Niger and Senegal. Although the Organisation Commune Africaine et Mauricienne (OCAM) has been dissolved, Côte d'Ivoire's tax administration continues to honor the provisions of the OCAM tax treaty, which was signed by Benin, Burkina Faso, Central African Republic, Congo, Côte d'Ivoire, Gabon, Mauritius, Niger, Rwanda, Senegal and Togo.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Belgium	12	16	10
Benin	12	18	0
Burkina Faso	12	18	0
Canada	12	15	10
Central African Republic	12	18	0
Congo	12	18	0
France	12	15	10
Gabon	12	18	0
Germany	12	15	10
Italy	12	15	10
Mali	12	18	0
Mauritania	12	18	0
Mauritius	12	18	0
Niger	12	18	0
Norway	12	16	10
Rwanda	12	18	0
Senegal	12	18	0
Switzerland	12	15	10
Togo	12	18	0
United Kingdom	12	15	10
Nontreaty countries	10/12/18 (a)	18 (b)	20

(a) See Section B.

(b) See footnote (d) to Section A.

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(Country Code 385)

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**A. At a Glance**

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Branch Tax Rate (%)	20
Withholding Tax (%)	
Dividends	0
Interest	15
Royalties from Patents, Know-how, etc.	15
Fees for Market Research, Tax Advice, Business Advice and Auditor Services	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income. A company is resident in Croatia if its legal seat or its place of their management and supervision is located there. Branches of foreign companies are subject to tax only on their profits derived from Croatia.

**Tax Rate.** The rate of corporate income tax is 20%.

**Tax Incentives.** Tax exemptions and other tax reliefs are available under special legislation regulating incentives. For example, the Investment Promotion Act provides incentives for investments in new business activities and new workplaces.

**Capital Gains.** Capital gains are included in taxable income and subject to tax at the normal corporate income tax rate.

Unrealized capital gains derived from revaluations of depreciable assets are taxable up to the amount of the increased depreciation expense resulting from such revaluations. Losses from revaluations of financial assets and inventories are recognized as tax-deductible expenses at the time of disposal of such items. Losses from revaluations of other depreciable assets as well as of land and other nondepreciable assets are recognized as tax-deductible expenses in the period of revaluation.

**Administration.** The normal tax year is the calendar year, but a company may apply for a different tax year.

Annual tax returns must be filed by the end the fourth month following the tax year.

Companies must make monthly advance payments of tax. In principle, each monthly advance payment is equal to one-twelfth of the tax due for the preceding year. The balance of tax due must be paid by the end of the fourth month following the tax year. If the total of the advance payments exceeds the tax due for the year, the company may claim a refund.

**Dividends.** Dividends are not subject to withholding tax in Croatia.

**Foreign Tax Relief.** A foreign tax credit is available to resident companies for foreign tax paid on income earned directly or

through permanent establishments abroad. The amount of the credit is the lower of the Croatian corporate tax payable on the foreign income and the foreign tax paid.

### C. Determination of Trading Income

**General.** The corporate income tax base is determined in accordance with the accounting regulations (International Accounting Standards [IAS]/International Financial Reporting Standards [IFRS]), adjusted for certain items that increase or decrease the tax base.

The following items increase the tax base:

- Depreciation expenses exceeding the maximum allowable amounts.
- Penalty interest paid between related parties.
- Privileges and other benefits granted to natural and legal persons to execute certain actions in favor of the company.
- Nondeductible interest on loans between related parties.
- The costs of forced collection of tax and other levies.
- Private (not business related) costs of shareholders and their related parties.
- Value adjustment of shares (unrealized losses), if these were included in the expenses.
- Seventy percent of entertainment expenses resulting from a business relationship with a business partner. These expenses include the following: gifts, regardless of whether they include the mark of the company or product; the cost of holidays, sports, recreation and leisure, rental of airplanes, automobiles and vacation homes and vessels; and similar expenses.
- Fines imposed by competent bodies.
- Thirty percent of expenses, except insurance and interest costs incurred with respect to owned or rented motor vehicles or other means of personal transportation (for example, personal car, vessel, helicopter and airplane) used by managerial, supervisory and other employees, if the personal use of the means of personal transportation is not taxed as a benefit in kind.
- Donations in cash or in kind exceeding 2% of revenue. The limitation does not apply to donations made in accordance with the competent ministry's decisions on special programs and actions undertaken outside the regular business activities of the beneficiary.
- Hidden profit payments.
- Other expenses not incurred for the purpose of earning profit.

**Inventories.** Inventories are valued at the lower of cost or market value. Costs include all acquisition costs, conversion costs and other costs incurred in bringing inventories to their current location and condition. In general, the cost of inventories must be determined using the first-in, first-out (FIFO) or weighted-average method.

**Provisions.** The following provisions are deductible for tax purposes:

- Provisions for severance payments determined in accordance with the Labor Act;
- Provisions for costs of renewing natural resources;
- Provisions for costs incurred during guarantee periods;

- Provisions for costs related to court disputes that have already been initiated against the taxpayer;
- Provisions for the risk of potential loss in banks, up to the amount prescribed by the Croatian National Bank; and
- Provisions in insurance companies, up to the obligatory amount prescribed by the law governing the insurance.

Value adjustments of trade receivables are deductible if the receivables are overdue for more than 120 days as of the end of the tax year and if they are not collected by the 15th day before the filing of the tax return. However, if the taxpayer does not take measures for debt collection (for example, sue the debtor) before the receivables are barred by the statute of limitations, the receivables treated as deductible for tax purposes in prior years must be included in income. In addition, value adjustments are deductible for tax purposes in the following circumstances:

- The receivables do not exceed HRK 5,000 per debtor, other than a natural person;
- The company is suing the debtor or a foreclosure is being conducted;
- The receivables are reported in a bankruptcy proceeding of the debtor; or
- The debt has been settled in the prebankruptcy or bankruptcy proceedings of the debtor.

**Tax Depreciation.** Depreciation is calculated by using the straight-line method. The following are the annual depreciation rates:

Asset	Rate (%)
Buildings and ships over 1,000 gross registered tons	5
Primary herd and personal cars	20
Intangible assets, equipment, vehicles (except personal cars), and machinery	25
Computers, computer hardware and software, mobile telephones and computer network accessories	50
Other assets	10

For tax purposes, the maximum depreciation rates set out above can be doubled. Doubled depreciation rates can be recognized for tax purposes only if these rates are also applied for accounting purposes.

Depreciation expenses for personal cars and other vehicles used for personal transportation are deductible up to the amount calculated on the purchase cost of HRK 400,000 per vehicle. The limitation does not apply to vehicles used exclusively for rental or transportation activities.

**Relief for Losses.** Tax losses may be carried forward for five years, but they may not be carried back.

**Groups of Companies.** Croatia does not allow consolidated returns or provide any other tax relief for groups of companies. Each company within a group is taxed separately.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (banks and insurance companies are exempt)	0/10/22
Real estate tax, on the value determined by the tax authorities	5
Social security contributions; paid by Employer	17.2
Employee	20
Personal income tax; the withholding liability is borne by the employer	
Up to HRK 3,200 per month	15
From HRK 3,200 to HRK 8,000 per month	25
From HRK 8,000 to HRK 22,400 per month	35
In excess of HRK 22,400 per month	45
Municipal surcharge; varies among cities; the rate for Zagreb is 18%	0 to 18

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The Croatian currency is the kuna (HRK).

The Croatian National Bank is responsible for foreign-exchange regulations.

The Foreign Exchange Act generally imposes restrictions on payments abroad that do not have a legal basis. No restrictions are imposed on transfers of paid-in share capital, dividends, profits, interest, royalties, fees for know-how and similar payments.

Under the Foreign Exchange Act, Croatian resident companies may acquire foreign securities, provide long-term loans to non-resident companies, acquire real estate abroad and engage in certain other specified transactions. Short-term financial loans may be made to foreign persons or entities by banks or by legal entities having majority ownership of, or control over, the loan recipient.

Natural persons may make direct investments abroad, acquire foreign securities, provide long-term loans to nonresidents, acquire real estate abroad and provide short-term loans to nonresidents who are related parties (family members).

The Foreign Exchange Act imposes restrictions on the granting of short-term loans to nonresidents (other than relatives), on the maintenance of foreign-currency accounts at foreign financial institutions and on making payments for foreign insurance policies.

**Transfer Pricing.** Croatia has transfer-pricing rules. Under these rules, the tax authorities may adjust the taxable income of Croatian taxpayers derived from transactions with related foreign companies if they deem prices paid (or charged) to related foreign companies for various types of items to be excessive (or below market value). In such circumstances, taxable income is increased (or expenses decreased) by the difference between prices stated in financial statements and arm's length prices.

A company may apply one of the following methods for establishing an arm's length price:

- Comparable uncontrolled price method;
- Resale price method;

- Cost-plus method;
- Profit-split method; and
- Transactional net margin method.

Before the beginning of each tax year, the Ministry of Finance sets the market interest rate for related-party loans. If the rate is not published, the relevant rate is the Croatian National Bank discount rate.

**Debt-to-Equity Ratios.** Under thin-capitalization rules, interest on loans from foreign shareholders or loans guaranteed by foreign shareholders is nondeductible if the loan balance exceeds four times the shareholders' share in the equity of the borrower.

## F. Tax Treaties

Croatia has entered into double tax treaties with Albania, Austria, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Chile, China, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Israel, Jordan, Korea (South), Latvia, Lithuania, Macedonia, Malaysia, Malta, Mauritius, Moldova, the Netherlands, Poland, Romania, the Russian Federation, San Marino, Serbia, the Slovak Republic, Slovenia, South Africa, Spain, Switzerland, Turkey and Ukraine.

Croatia has signed or initialed tax treaties with Egypt, Indonesia, Iran and Kuwait, but these treaties have not yet become effective.

Croatia has adopted the double tax treaties entered into by the former Yugoslavia with the following countries: Denmark; Finland; Italy; Norway; Sweden; and the United Kingdom. Croatia has signed a new tax treaty with Italy, which, on ratification, will replace the tax treaty between Italy and the former Yugoslavia.

The withholding tax rates for payments by Croatian companies under Croatia's double tax treaties and under the former Yugoslavia's double tax treaties adopted by Croatia are listed in the table below. Dividends are not subject to withholding tax under Croatian domestic law. Consequently, the table provides treaty withholding tax rates for interest and royalties only.

	<b>Interest</b>	<b>Royalties</b>
	%	%
Albania	10	10
Austria	5	0
Belarus	10	10
Belgium	10	0
Bosnia-Herzegovina	10	10
Bulgaria	5	0
Canada	10	10
Chile	5/15	5/10
China	10	10
Czech Republic	0	10
Denmark	0	10
Estonia	10	10
Finland	0	10
France	0	0
Germany	0	0
Greece	10	10
Hungary	0	0



	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>
Ireland	0	10
Israel	5/10	5
Italy	10	10
Jordan	10	10
Korea (South)	5	0
Latvia	10	10
Lithuania	10	10
Macedonia	10	10
Malaysia	10	10
Malta	0	0
Mauritius	0	0
Moldova	5	10
Netherlands	0	0
Norway	0	10
Poland	10	10
Romania	10	10
Russian Federation	10	10
San Marino	10	5
Serbia	10	10
Slovak Republic	10	10
Slovenia	5	5
South Africa	0	5
Spain	8	8
Sweden	0	0
Switzerland	5	0
Turkey	10	10
Ukraine	10	10
United Kingdom	10	10
Nontreaty countries	15	15

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**A. At a Glance**

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	20
Branch Tax Rate (%)	10
Withholding Tax (%)	
Dividends	0 (a)
Interest	0
Royalties from Patents, Know-how, etc.	0 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) A defense fund tax at a rate of 15% is withheld from dividends paid to resident individuals.
- (b) A 10% tax is withheld from royalties if the asset for which the royalties are paid is used in Cyprus.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies resident in Cyprus are subject to income tax on their worldwide income. A company is resident in Cyprus if its control and management are located in Cyprus. Nonresident companies are taxed only on income derived from a permanent establishment in Cyprus and on rental income from property located in Cyprus.

**Rate of Corporate Tax.** The standard rate of company tax is 10%.

**Capital Gains.** A capital gains tax of 20% is levied on gains derived from the disposal of immovable property located in Cyprus and from the disposal of shares in companies whose assets include immovable property located in Cyprus (except for shares of companies listed on a recognized stock exchange). A gain is the difference between the sales proceeds and the original cost, adjusted to take into account increases in the cost-of-living index.

**Administration.** The income year in Cyprus is the calendar year. Tax is payable on 1 August following the income year. However, an estimate of tax due is made by 1 August of the income year, and provisional tax is payable in three equal installments on 1 August, 30 September and 31 December.

Overdue tax is subject to interest of 8% a year, beginning on the due date.

**Dividends.** Dividends paid are not subject to withholding tax.

A 15% defense fund tax is withheld from dividends paid to resident individuals. This tax is a final tax.

If a company does not distribute as dividends at least 70% of its accounting profits after tax within two years after the end of the relevant income year, a 15% defense fund tax is imposed on a deemed distribution of 70% of the profits. If a company distributes more than 0%, but less than 70%, of its profits, the amount of the deemed distribution subject to tax is reduced by the amount of the actual distribution. The tax on a deemed distribution is reduced proportionally by the percentage of shares held by nonresidents.

**Foreign Tax Relief.** Foreign tax on profits and gains of a Cyprus resident company is credited against Cyprus tax payable. Such foreign tax relief cannot exceed Cyprus tax payable on the same profits or gains.

### C. Determination of Trading Income

**General.** An assessment is based on accounts prepared in accordance with generally accepted accounting principles, subject to certain adjustments and provisions. Expenses must be incurred wholly and exclusively for the production of income.

**Inventories.** Inventory is generally valued at the lower of cost or net realizable value. Cost must be determined under the first-in, first-out (FIFO) method. The last-in, first-out (LIFO) method is not acceptable.

#### Depreciation and Amortization Allowances

*Plant and Machinery.* A straight-line allowance of 10% a year is given on capital expenditures for plant and machinery.

*Industrial Buildings.* A straight-line allowance of 4% a year is available for industrial buildings.

*Commercial Buildings.* A straight-line allowance of 3% a year is allowed for commercial buildings.

*Office Equipment.* A straight-line allowance of 20% a year is allowed for computers. Other office equipment is depreciated under the straight-line method at an annual rate of 10%.

*Motor Vehicles.* In general, a straight-line allowance of 20% a year is allowed for motor vehicles (except for private saloon cars).

*Sales of Depreciable Assets.* On disposal of an asset, if sale proceeds are less than the remaining depreciable base, a further allowance is granted, up to the difference. If sale proceeds exceed the depreciable base, the excess (up to the amount of allowances received) is included in taxable income.

**Relief for Losses.** Losses can be carried forward without any time restriction. Loss carrybacks are not allowed.

**Groups of Companies.** Group loss relief for a loss incurred in an income year is allowed between resident group companies that meet certain conditions.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on any supply of goods or services, other than an exempt supply, made in Cyprus by a taxable person (taxable if annual supplies exceed £9,000) in the course of business	0/5/8/15
Payroll taxes (offshore companies are exempt with respect to their expatriate employees; expatriate employees of offshore companies are also exempt)	
Social insurance contribution, levied on each employee's gross salary, up to £2,149 a month; payable by both employer and employee	6.3
Special Cohesion Fund, levied on gross salary; payable by employer	2
Human Resource Development Authority and Redundancy Fund, levied on gross salary, up to £2,149 a month; paid by employer	1.7
Leave Fund, levied on gross salary, up to £2,149 a month; paid by employer in lieu of holiday pay (employer may obtain exemption from contribution to this fund)	8
Special contribution for defense	
On rents received	3
On interest received (except for interest earned in the ordinary course of business)	10

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Cyprus does not impose foreign-exchange controls.

**Mergers and Demergers.** No taxes arise in mergers and demergers with respect to transfers of businesses, assets or shares.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Austria	10	0	0
Belarus	15 (a)	5	5
Belgium	15 (d)	10	0
Bulgaria	10 (h)	7	10
Canada	15	15 (b)	10 (r)
China	10	10	10
Czechoslovakia (l)	10	10 (b)	5 (c)
Denmark	15 (d)	10 (e)	0
Egypt	15	15	10
France	15 (f)	10 (e)	0 (g)
Germany	15 (m)	10 (b)	0 (s)
Greece	25	10	0 (g)
Hungary	0	10 (b)	0
India	15 (f)	10 (b)	15
Ireland	0	0	0 (g)
Italy	0	10	0
Kuwait	10	10 (b)	5 (c)
Lebanon	5	5	0

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Malta	15	10 (b)	10
Mauritius	0	0	0
Norway	0	25	0
Poland	10	10 (b)	5
Romania	10	10 (b)	0 (c)
Russian Federation	10 (k)	0	0
San Marino	0	0	0
Seychelles	0	0	5
Singapore	0	10 (o)	10
South Africa	0	0	0
Sweden	15 (h)	10 (b)	0
Syria	15	10 (b)	15 (n)
Thailand	10	15 (p)	15 (q)
USSR (j)	0	0	0
United Kingdom	0	10	0 (g)
United States	0	10 (i)	0
Yugoslavia	10	10	10
Nontreaty countries	0	0	0 (t)

- (a) The rate is 10% for dividends paid to a company holding directly at least 25% of the capital of the payer. The rate is 5% if the recipient of the dividends has invested at least €200,000 in the share capital of the payer.
- (b) The rate is 0% for interest paid to the government of the other contracting state.
- (c) The rate is 0% for royalties paid for literary, artistic or scientific works, as well as for film and television royalties.
- (d) The rate is 10% for dividends paid to a company holding directly at least 25% of the capital of the payer.
- (e) The rate is 0% for interest paid to the government of the other contracting state and for interest paid on bank loans or with respect to credit sales of industrial, commercial or scientific equipment or merchandise.
- (f) The rate is 10% for dividends paid to a company holding directly at least 10% of the share capital of the payer.
- (g) The rate is 5% for film and television royalties.
- (h) The rate is 5% for dividends paid to a company holding directly at least 25% of the share capital of the payer.
- (i) The rate is 0% for interest paid to a government, bank or financial institution.
- (j) The USSR treaty applies to the republics of the Commonwealth of Independent States (CIS).
- (k) The rate is reduced to 5% if the recipient has invested at least US\$100,000 in the share capital of the payer.
- (l) The Czechoslovakia treaty applies to the Czech and Slovak Republics.
- (m) The rate is 10% for dividends paid to a company holding directly 25% or more of the share capital of the payer. However, if German corporation tax on distributed profits is lower than on the German corporation tax on undistributed profits and if the difference between the two rates is 15% or more, the withholding tax rate is increased from 10% to 27%. In all other cases, the withholding tax rate is 15%.
- (n) The rate is 5% if the royalties are paid to a company controlling 10% or more of the voting power of the payer.
- (o) The rate is 7% for interest paid to banks and financial institutions.
- (p) The rate is 0% for interest paid on bank loans.
- (q) The rate is 5% for royalties paid for literary, artistic or scientific works, or for film or television. The rate is 10% for payments for the use of industrial, commercial or scientific equipment.
- (r) The rate is 0% for royalties paid for literary, dramatic, musical or artistic works.
- (s) The rate is 5% for royalties paid for literary, artistic or scientific works, as well as for film and television royalties. The rate is 10% for amounts paid for the use of industrial, commercial or scientific equipment.
- (t) A 10% tax is withheld from royalties if the asset for which the royalties are paid is used in Cyprus.

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### A. At a Glance

Corporate Income Tax Rate (%)	21 (a)(b)
Capital Gains Tax Rate (%)	0/21 (a)(c)
Branch Tax Rate (%)	21 (a)
Withholding Tax (%) (d)	
Dividends	0/15 (e)
Interest	0/15 (f)
Royalties	15 (g)
Rental Income from Leases	5/15 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (i)

- (a) The 21% rate applies for 2008. The rate is reduced to 20% for 2009 and to 19% for 2010 and future years.
- (b) Investment funds, mutual funds and pension funds are subject to tax at a rate of 5%.
- (c) Capital gains derived by Czech parent companies or Czech permanent establishments on transfers of shares in their subsidiaries is exempt from tax if certain conditions are satisfied. For tax purposes, if profits from the holding of shares in a subsidiary of a foreign company are attributable to that company's Czech permanent establishment, such profits are taxed in the Czech Republic.
- (d) The rates may be reduced by applicable tax treaties.
- (e) Dividends paid to residents and nonresidents are subject to a final withholding tax at a rate of 15%. Effective from 2009, the rate is reduced to 12.5% for Czech residents. Under the EU Parent-Subsidiary Directive (No. 90/435/EEC),

dividends paid by Czech companies to parent companies (as defined in the directive) located in other EU member states are exempt from withholding tax if the parent company maintains a holding of at least 10% of the distributing company for an uninterrupted period of at least one year. Dividend distributions between two Czech companies are exempt from tax under similar conditions.

- (f) The 15% rate applies to interest paid to nonresidents and to individuals. Effective from 2009, the withholding tax rate will be reduced to 12.5% for Czech residents. Under EU Directive 2003/49/EC, interest paid by Czech companies to related companies (as defined in the directive) located in other EU member states is exempt from withholding tax if certain other conditions are met. Interest on mutual deposits with banks in the interbank market and interest on deposits of insurance companies with banks are exempt from withholding tax.
- (g) This is a final withholding tax that applies to nonresidents. Effective from 2009, the rate is reduced to 12.5%. Royalties paid by Czech companies to companies located in other EU member states will be exempt from tax, effective from 1 January 2011.
- (h) The 5% withholding tax is imposed on gross rent if the lessee purchases the leased asset at the end of the lease term and if certain other conditions are met. Other rental payments are subject to a 15% withholding tax. The 15% rate will be reduced to 12.5%, effective from 2009.
- (i) Losses incurred in 2003 and earlier years may be carried forward for seven years. Losses incurred in 2004 and future years may be carried forward for five years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident enterprises are subject to tax on their worldwide income. An enterprise is considered to be a resident enterprise if it is incorporated in the Czech Republic or if its management is located there. Nonresident enterprises are subject to income tax on their Czech-source income only.

**Rates of Corporate Tax.** For 2008, the standard corporate income tax rate for Czech enterprises and branches of foreign enterprises is 21%. The rate is reduced to 20% for 2009 and to 19% for 2010 and future years. Investment funds, mutual funds and pension funds are subject to tax at a rate of 5%. No differences exist between the taxation of 100% Czech-owned enterprises and those with foreign investment.

**Investment Incentives.** Investors in manufacturing may apply for any of the following incentives:

- Corporate income tax relief for up to five years (subject to a maximum limitation on the total benefit);
- Job-creation grants;
- Grants for retraining of employees; and
- Discounts on the purchase price of land.

The total value of the incentives can be as much as 40% of the actual investment, depending on the location and timing of the investment. This maximum limit applies to the total of tax relief, job-creation grants and discounts. Retraining grants are not subject to the limit.

The corporate income tax relief and property-related incentives are offered throughout the entire Czech Republic. Job-creation grants and training grants are offered only in regions with high unemployment. Land at discounted prices is available only in specified locations.

To qualify for the incentives, the following general conditions must be satisfied:

- The investor must invest at least CZK 100 million, with at least CZK 50 million of the investment covered by the equity of the investor. The CZK 100 million requirement may be reduced to CZK 60 million or CZK 50 million in areas with high unemployment. If the reduced requirement applies, at least half of the minimum investment must be covered by the equity of the investor.
- The investment is made to acquire or construct new production plant or to expand existing production facilities for the purpose of launching a new production activity.
- The investment must be in a manufacturing sector and at least 60% of the total investment must be invested in qualifying production machinery. Machinery must be acquired for arm's length price and produced no more than two years before the acquisition.
- The value of intangible assets (licenses and know-how) must equal no more than 50% of the total value of the tangible assets (land, buildings and machinery).
- The proposed production must meet Czech environmental standards.
- All requirements must be met within three years after the date of granting the incentives. The Ministry of Industry and Trade may extend this deadline for up to five years.
- The investment project may not begin until the filing of an application and the obtaining of confirmation from CzechInvest (the Czech governmental agency collecting, reviewing and processing the investment incentives application) that the applicant could meet the conditions for the investment incentives.

In addition to the general conditions listed above, investors claiming the income tax relief must satisfy certain special conditions, including, among others, the following:

- They must reduce their tax base by claiming maximum depreciation, deducting all available provisions and using all available tax losses, in accordance with the tax law;
- They must be the first user of tangible assets (excluding real estate) that are acquired for the purposes of the investment;
- They may not terminate their activities, merge or declare bankruptcy; and
- They may not increase their tax base by entering into related-party transactions.

Specific conditions apply to job-creation, retraining and property-related grants.

Different investment incentives (cash grants only) are available for centralized services operations in the Czech Republic. The services include development and innovation centers, customer contact centers, shared services centers, such as centralized accounting, and information technology and high-technology repair centers.

The government grants the incentives on a case-by-case basis. It does not automatically grant the incentives to an investor satisfying all of the conditions. However, in practice, the government grants the incentives if the conditions are satisfied.

**Capital Gains.** In the Czech Republic, realized and unrealized capital gains are recognized.



Realized capital gains are included with other taxable income and taxed at the regular corporate income tax rate. Capital losses on certain assets may be deducted from ordinary income, while capital losses on other assets are not deductible, even from other capital gains.

Unrealized capital gains and losses, which result from revaluation to fair value, are taxable or deductible only with respect to certain assets.

**Administration.** Companies may select a calendar year or a fiscal year as its tax year. If a company uses a tax year other than the calendar year, it must file a notification with the tax authorities.

Tax returns must be filed within three months after the end of the tax year. On application of the company, an extension of three months to file a tax return may be granted at the discretion of the tax authorities. Companies that are subject to a statutory audit are automatically granted the three-month extension.

A company with tax liability of more than CZK 150,000 for the preceding year must make quarterly advance payments of tax, each equal to 25% of the preceding year's tax liability. The payments must be made by the 15th day of the third, sixth, ninth and twelfth month of their tax year. Any balance of tax due must be paid by the due date for filing the tax return.

If a company's liability for the preceding year exceeded CZK 30,000, but did not exceed CZK 150,000, installments that are each equal to 40% of the tax liability for the preceding year must be paid by the 15th day of the sixth and twelfth months of their tax year. If the preceding year's tax liability was CZK 30,000 or less, only a single payment is required on filing the annual return.

Late payments incur interest charges at a rate established by law. Overpayments are refunded within 30 days of the taxpayer's application.

**Dividends.** Dividends paid to residents and nonresidents are subject to a final withholding tax at a rate of 15%. Effective from 1 January 2009, this rate is reduced to 12.5% for residents. However, under the EU Parent-Subsidiary Directive (No. 90/435/EEC), dividends paid by Czech companies to parent companies (as defined in the directive) that are located in other EU member states are exempt from withholding tax if the parent company maintains a holding of at least 10% of the distributing company for an uninterrupted period of at least one year. Dividend distributions between two Czech companies are exempt from tax under similar conditions.

**Foreign Tax Relief.** Foreign tax relief (through creditor exemption) is available only under tax treaties. If foreign tax relief is not available under a treaty, the income tax paid abroad may be deducted as an expense in the following year if it is imposed on income included in taxable income in the Czech Republic.

### **C. Determination of Trading Income**

**General.** Taxable income is calculated according to Czech accounting regulations, with adjustments for tax purposes.

In general, all expenses incurred to generate, assure and maintain taxable income are deductible, subject to the limits specified in the corporate income tax law and in special legislation, if documented by the taxpayer. The following are some of the expenses that may be deducted:

- Depreciation of tangible and intangible assets (see *Depreciation* below).
- Cost of insurance if related to taxable income.
- Membership contributions paid to legal entities under certain conditions.
- Operating expenses for environmental-protection equipment installed in accordance with specific legislation.
- Damages resulting from natural disasters. The amount of the damage must be established by evidence submitted by an expert from an insurance company. Damages caused by unknown perpetrators need be confirmed only by the police.
- Real estate tax, road tax, and fees paid in accordance with Czech legislation, if related to activities that generate taxable income.
- Specified expenses related to the provision of proper working, social and health-care conditions.
- Payments on leases, including financial leases, under certain conditions.
- Travel expenses related to work in the Czech Republic and abroad, subject to limits specified in special legislation.
- Donations valued at CZK 2,000 or more for various social and charitable purposes. In general, the maximum amount of this deduction is 5% of taxable income.

**Inventory.** Inventory is valued at acquisition or production cost. Costs include all costs necessary to convert the inventory to its current condition and to transport it to its current location. No deduction is allowed for inventory provisions or for other decreases in inventory value. Under certain circumstances, the liquidation of inventory may be deductible for tax purposes.

**Provisions.** Provisions are not deductible unless special legislation permits their creation for tax purposes.

Tax relief is provided with respect to overdue trading debts. A special regime applies to unpaid receivables that were due before 31 December 1994.

For overdue debts not exceeding CZK 200,000 that are due after 31 December 1994, if between 6 and 12 months have elapsed since the agreed due date for the debt, 20% of the book value of the debt is deductible. This deduction is allowed regardless of whether court or arbitration proceedings have commenced against the debtor. If the debt is more than 12 months overdue, the creditor must commence court or arbitration proceedings against the debtor to claim a further tax deduction for the debt. The deduction is calculated by applying the following specified percentages to the book value of the debt.

Months Elapsed Since Agreed Due Date		Deductible Percentage of Book Value
Exceeding	Not Exceeding	%
12	18	33
18	24	50
24	30	66
30	36	80
36	—	100

For debts exceeding CZK 200,000 that are overdue more than six months, the rules described above apply if the creditor has commenced court or arbitration proceedings against the debtor.

The above deductions must be recorded in the accounting books. The deductions may not be claimed for debts from related parties and other specified debts.

A 100% provision can be established for receivables up to CZK 30,000, subject to certain conditions.

**Depreciation.** The corporate income tax law includes specific provisions concerning the depreciation of tangible and intangible assets. Depreciable tangible assets are divided into six categories, each of which specifies a period (a specified number of years) over which all assets in the category are depreciated.

The following are the six categories of depreciation, the time periods for depreciation of assets in each category and representative assets included in each category.

Category	Asset	Years
1	Office machines and some light machinery	3
2	Passenger cars, buses, airplanes, tractors, lorries and furniture	5
3	Heavy machinery	10
4	Wooden buildings, pipelines, buildings for the production of energy, and buildings and halls built near mines	20
5	Buildings	30
6	Specified buildings	50*

\* This category includes hotels, stores and office buildings.

Assets other than buildings that cannot be classified in any of the above categories are considered to be in Category 2. Category 5 covers buildings that are not covered by Categories 4 or 6.

Taxpayers may elect to depreciate assets using the straight-line or the accelerated method. The method chosen, however, does not affect the period of depreciation. Under the accelerated method, depreciation for the first year is calculated by dividing the cost of the asset by the applicable coefficient (see table below). For subsequent years, accelerated depreciation is calculated by multiplying the residual tax value of the asset by two and then dividing by the applicable coefficient, which is reduced by the number of years for which the asset has already been depreciated.

The following are the depreciation rates and coefficients for the six categories under the straight-line and accelerated methods.

Category	Straight-Line Rate	Accelerated-Depreciation Coefficient
1	20% for first year and 40% for subsequent years	3 for first year and 4 for subsequent years

Category	Straight-Line Rate	Accelerated-Depreciation Coefficient
2	11% for first year and 22.25% for subsequent years	5 for first year and 6 for subsequent years
3	5.5% for first year and 10.5% for subsequent years	10 for first year and 11 for subsequent years
4	2.15% for first year and 5.15% for subsequent years	20 for first year and 21 for subsequent years
5	1.4% for first year and 3.4% for subsequent years	30 for first year and 31 for subsequent years
6	1.02% for first year and 2.02% for subsequent years	50 for first year and 51 for subsequent years

Taxpayers may elect to use lower than the maximum straight-line depreciation rates. Additional rules apply to assets that were technically improved.

Depreciable intangible assets are divided into two categories — intangible assets that may be used for a definite time period and those that may be used for an indefinite time period. Intangible assets that may be used for a definite period are depreciated proportionally during such period. If the period for use is indefinite, the intangible asset is depreciated proportionally over the following periods.

Category	Period (Months)
Audiovisual works	12
Software	36
Foundation expenses	60
Other intangible assets	72

An initial depreciation acceleration (additional 10% to 20% of input price; in general, the input price is the acquisition cost, including related costs) is granted in the year of acquisition for certain tangible assets if other conditions are met.

**Relief for Losses.** Losses may be carried forward for five years. Losses incurred in 2003 and earlier years may be carried forward for seven years. The carryforward may be lost if a “substantive change” in persons participating in the equity or control of the taxpayer occurs. “Substantive change” is defined as the following: a change in more than 25% equity ownership; or a change resulting in a shareholder receiving decisive influence. Special rules apply to public limited companies that issue bearer shares. Tax losses are transferable on mergers if specific conditions are met. No carryback is permitted.

**Groups of Companies.** Czech tax law does not provide for consolidated tax returns or other types of group relief.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax (VAT), levied on all taxable supplies (goods and services), acquisitions of goods from other EU member states and imports of goods; certain supplies are exempt	
Standard rate; applicable to most goods and services	19%
Reduced rate; applicable to specified goods and services (for example, books, pharmaceuticals, food products and public transport)	9%
Social security contributions	
Health insurance	
Employer	9%
Employee	4.5%
Old-age pension	
Employer	21.5%
Employee	6.5%
Sickness	
Employer	3.3%
Employee	1.1%
Unemployment	
Employer	1.2%
Employee	0.4%
Real estate transfer tax, levied on the sale or transfer of real estate	3%
Excise tax, imposed on entities that produce or import certain goods, including hydrocarbon fuels and lubricants, alcohol and spirits, beer, wine and tobacco products; tax based on the quantity of goods expressed in specific units; tax may be levied only once on a particular good	Various
Road tax, imposed on entities that use vehicles; based on engine capacity and number of axles	Various
Environmental tax; imposed on electricity, natural gas and solid fuel when delivered to final consumers; tax is based on the quantity of goods expressed in specific units; tax is administered and paid by the distributor which charges it to the final customer as a price increase	Various
Tax stamps for the use of highways	
Passenger cars	CZK 1,000
Trucks	CZK 8,000

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The only legal tender valid in the Czech Republic is the Czech crown (CZK). Other currencies may be used for domestic transactions, but the use of the Czech crown is prevalent.

The Czech crown is fully convertible. Several financial transactions, such as direct investments or acceptance of credit from abroad, are subject to a reporting requirement.

**Antiavoidance Legislation.** In applying the tax law, the tax authorities may consider the substance of a transaction if the form of the transaction conceals the actual facts.

**Transfer Pricing.** If prices in a transaction involving related parties vary from the current market prices and if the difference cannot be justified, the market prices are used for tax purposes. Related parties include companies related through capital (that is, the same legal or natural persons directly or indirectly manage, control or own more than 25%) and companies related in a different manner. In addition, related parties are persons who establish a business relationship for the principal purpose of decreasing taxable income or increasing a tax loss.

Taxpayers may apply to the tax authorities for advance pricing agreements and for binding opinions on technical improvements, the allocation of expenses to taxable income, expenses incurred on research and development projects, expenses incurred on buildings that are also used for private purposes and the application of VAT rates.

**Financing Expenses.** The deductibility for tax purposes of financing expenses is limited according to the following rules:

- The deductibility for tax purposes of financing expenses on related and unrelated party debt is capped at a referential rate applicable to the relevant currency, increased by 4% and calculated from the daily average of the outstanding amount of loans;
- Interest on loans that are subordinated to other liabilities or are profit-related is not deductible for tax purposes; and
- Related-party interest is subject to a debt-to-equity ratio of 2:1, while unrelated party interest is subject to a ratio of 6:1 (4:1, effective from 2009).

**Foreign Investment.** Except for purchases of real property in the Czech Republic, the same rules apply to both Czech investors and foreign investors. Foreign individuals may own real estate in the Czech Republic if certain conditions are met. Foreign legal entities may own real estate in the Czech Republic only through a registered branch.

## F. Treaty Withholding Tax Rates

Czechoslovakia entered into a multilateral tax treaty with other members of the Council for Mutual Economic Assistance (COMECON or CMEA). The COMECON treaty continues to apply to Kyrgyzstan and Tajikistan. This treaty provides for a 0% withholding rate for dividends, interest and royalties.

The Czechoslovakia-Yugoslavia treaty of 1984 continues to apply to Bosnia-Herzegovina.

The Czech Republic honors the other bilateral tax treaties of Czechoslovakia. It has also entered into tax treaties with many other countries. The following table lists the withholding rates under the bilateral treaties currently honored by the Czech Republic.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties (q)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Albania	5/15 (b)	5	10
Australia	5/15 (e)	10	10
Austria	0/10 (c)(s)	0 (t)	0/5 (a)
Azerbaijan	8	0/5/10 (g)	10
Belarus	10	0/5 (g)	10
Belgium	5/15 (b)(s)	10 (t)	0/5/10 (r)
Brazil	15	0/10/15 (g)(i)	15/25 (a)
Bulgaria	10	0/10 (g)	10
Canada	5/15 (c)	0/10 (g)	10
China	10	0/10 (g)	10
Croatia	5	0	10
Cyprus	10 (s)	0/10 (g)(t)	0/5 (a)
Denmark	15 (s)	0 (t)	0/5 (a)
Egypt	5/15 (b)	0/15 (g)	15
Estonia	5/15 (b)(s)	0/10 (g)(t)	10
Finland	5/15 (b)(s)	0 (t)	0/1/5/10 (m)
France	0/10 (b)(s)	0 (t)	0/5/10 (u)
Georgia	5/15 (b)	0/8 (g)	0/5/10 (u)
Germany	5/15 (b)(s)	0 (t)	5
Greece	15 (s)	0/10 (g)(t)	0/10 (a)
Hungary	5/15 (b)(s)	0 (t)	10
Iceland	5/15 (b)	0	10
India	10	0/10 (g)	10
Indonesia	10/15 (e)	0/12.5 (g)	12.5
Ireland	5/15 (b)(s)	0 (t)	10
Israel	5/15 (f)	0/10 (g)	5
Italy	15 (s)	0 (t)	0/5 (a)
Japan	10/15 (b)	0/10 (g)	0/10 (a)
Kazakhstan	10	0/10 (g)	10
Korea (North)	10	0/10 (g)	10
Korea (South)	5/10 (b)	0/10 (g)	0/10 (a)
Kuwait	0/5 (k)	0	10
Latvia	5/15 (b)(s)	0/10 (g)(t)	10
Lebanon	5	0	5/10 (r)
Lithuania	5/15 (b)(s)	0/10 (g)(t)	10
Luxembourg	5/15 (b)(s)	0 (t)	0/10 (a)
Macedonia	5/15 (b)	0	10
Malaysia	0/10 (l)	0/12 (g)	12
Malta	5 (s)	0 (t)	5
Mexico	10	0/10 (g)	10
Moldova	5/15 (b)	5	10
Mongolia	10	0/10 (g)	10
Morocco	10	0/10 (g)	10
Netherlands	0/10 (b)(s)	0 (t)	5
Nigeria	12.5/15 (c)	0/15 (g)	15
Norway	0/15 (c)	0	0/5/10 (u)
Philippines	10/15 (c)	0/10 (g)	10/15 (r)
Poland	5/10 (e)(s)	0/10 (g)(t)	5
Portugal	10/15 (j)(s)	0/10 (g)(t)	10
Romania	10	0/7 (g)	10
Russian Federation	10	0	10
Serbia and Montenegro	10	0/10 (g)	5/10 (a)
Singapore	5	0	10
Slovak Republic	5/15 (c)(s)	0 (t)	0/10 (a)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties (q)</b> %
Slovenia	5/15 (b)(s)	0/5 (g)(t)	10
South Africa	5/15 (b)	0	10
Spain	5/15 (b)(s)	0 (t)	0/5 (n)
Sri Lanka	6/15 (o)	0/10 (g)	0/10 (a)
Sweden	0/10 (b)(s)	0 (t)	0/5 (a)
Switzerland	5/15 (b)	0	5/10 (p)
Thailand	10	0/10 (g)	5/10/15 (h)
Tunisia	10/15 (b)	0/12 (g)	5/15 (a)
Turkey	10	0/10 (g)	10
Ukraine	5/15 (b)	0/5 (g)	10
United Arab Emirates	0/5 (k)	0	10
United Kingdom	5/15 (b)(s)	0 (t)	0/10 (a)
United States	5/15 (c)	0	0/10 (a)
Uzbekistan	10	0/5 (g)	10
Venezuela	5/10 (f)	0/10 (g)	12
Vietnam	10	0/10 (g)	10
Yugoslavia	5/15 (b)	0	10
Nontreaty countries	15	0/15 (d)	25

- (a) The lower rate applies to royalties paid for copyrights; the higher rate applies to royalties paid for patents, trademarks, and industrial or commercial scientific equipment or information.
- (b) The lower rate applies if the receiving company owns at least 25% of the payer.
- (c) The lower rate applies if the receiving company owns at least 10% of the payer. Under the Norway treaty, the 0% rate also applies to dividends paid to the government (or specified institutions).
- (d) Interest on mutual deposits with banks in the interbank market and interest on deposits of insurance companies with banks are exempt from tax. The 15% rate applies to other interest.
- (e) The lower rate applies if the receiving company owns at least 20% of the payer.
- (f) The 5% rate applies if the receiving company owns more than 15% of the payer.
- (g) The 0% rate applies to interest paid to (or by) the government (or specified institutions), subject to further conditions. Under the Georgia treaty, the 0% rate also applies to interest from loans and credits guaranteed by governments or related to sales of industrial equipment that are financed by loans. Under the Azerbaijan treaty, the 5% rate applies to interest on bank loans.
- (h) The 5% rate applies to royalties for copyrights; the 10% rate applies to royalties for patents and trademarks; the 15% rate applies to other royalties.
- (i) The 10% rate applies to loans and credits granted by a bank for a period of at least 10 years in connection with the following: sales of industrial equipment or studies; installation or furnishing of industrial or scientific units; or public works.
- (j) The lower rate applies if the receiving company owns at least 25% of the payer for at least two years preceding the payment of the dividend.
- (k) The 0% rate applies to a dividend paid to the government of a contracting state (or a governmental institution) or to a company that is at least 25% owned by the government of the contracting state.
- (l) The 0% rate applies to a dividend paid by a tax resident of Malaysia to a Czech tax resident who is the beneficial owner of the dividends.
- (m) The 0% rate applies to royalties for copyrights; the 1% rate applies to royalties paid for finance leases of equipment; the 5% rate applies to royalties paid for operating leases of equipment and for the use of, or right to use, software; the 10% rate applies to other royalties.
- (n) The lower rate applies to royalties for copyrights, with the exception of royalties for cinematographic films and films or tapes for television broadcasting. The higher rate applies to other royalties.
- (o) The lower rate applies to dividends paid by a tax resident of Sri Lanka to a Czech tax resident.
- (p) The treaty provides for a rate of 10%, but a protocol to the treaty provides for a rate of 5% until Swiss domestic law imposes a withholding tax on royalties.



- (q) Effective from 1 January 2011, royalties paid by Czech companies to affiliated companies located in other EU member states will be exempt from tax if the conditions stated in the EU Directive 2003/49/EC are satisfied. On the Czech Republic's accession to the EU, it obtained an exemption from EU Directive 2003/49/EC regarding the withholding tax on royalties.
- (r) The lower rate applies to patents, trademarks and any industrial, commercial, or scientific equipment or information; the higher rate applies to copyrights. Under the Belgium treaty, the rate is 0% for copyrights if certain conditions are met.
- (s) Under the EU Parent-Subsidiary Directive (90/435/EEC), dividends paid by Czech companies to parent companies (as defined in the directive) that are located in other EU member states are exempt from withholding tax if the parent company maintains a holding of at least 10% of the distributing company for an uninterrupted period of at least one year.
- (t) Interest paid by Czech companies to related companies (as defined in EU Directive 2003/49/EC) located in other EU member states is exempt from withholding tax.
- (u) The 0% rate applies to royalties paid for copyrights. The 5% rate applies to payments for industrial, commercial or scientific equipment. The 10% rate applies to royalties paid for patents, trademarks, designs or models, plans, secret patterns or production procedures and software, as well as for information relating to experience acquired in the area of industry, commerce or science.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	28 (a)
Interest	30 (a)
Royalties from Patents, Know-how, etc.	30 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

(a) See Section B.

(b) The rate is 0% for royalties paid for copyrights of literary, artistic or scientific works, including cinematographic films, and for the use of, or the right to use, industrial, commercial or scientific equipment.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** A resident company is a company incorporated in Denmark. In addition, a company incorporated in a foreign country is considered a resident of Denmark if it is managed and controlled in Denmark.

In general, Danish resident companies are taxed in accordance with a modified territoriality principle. Under this principle, all

Danish companies that are part of the same group must be included in Danish mandatory joint taxation, regardless of whether these companies are fully or partially subject to tax in Denmark. Companies resident in another country, foreign permanent establishments and real estate located outside Denmark are not included in such joint taxation. A Danish company is not required to include the income of its subsidiary in its own income if any of the following circumstances exist:

- The parent company cannot control the subsidiary as a result of substantial and continuous obstacles;
- Information is not easily available from the subsidiary without incurring high costs or the obtaining of such information can be very time consuming; and
- The subsidiary has not previously been included in joint taxation, and it was acquired temporarily and disposed of after a short period of time.

This rule does not apply to income generated through international shipping or aviation or to income that Denmark has the right to tax under a double tax treaty or other international agreement. In addition, income generated through a foreign permanent establishment of a resident company may also be subject to the Danish rules on the taxation of controlled foreign companies (CFCs; see Section E).

Denmark has a system of compulsory national joint taxation comprising all Danish affiliated companies and permanent establishments, and real estate located in Denmark (for details, see Section C).

Branches of foreign companies located in Denmark are taxed only on trading income and on chargeable capital gains derived from the disposal of trading assets that are located in Denmark and related to a permanent establishment.

**Rate of Corporate Tax.** For the 2008 income year, resident and non-resident companies are taxed at a rate of 25%.

**Capital Gains.** Capital gains are taxed as other income at a rate of 25%.

Gains derived from disposals of shares owned for three years or more are generally exempt from tax, unless the seller deals in shares.

Gains on the sale of goodwill are subject to tax.

Recaptured depreciation (see Section C) is taxed as ordinary income at a rate of 25%.

**Administration.** In general, the income year for companies is the calendar year. Companies may select a staggered income year, which is an income year other than the calendar year. They may change their income year if justified by special circumstances.

For companies with income years ending from 1 January to 31 March, tax returns must be filed by the end of the following July. For other companies, tax returns must be filed within six months after the end of their income year. Companies pay corporate tax on a current-year basis at a rate of 25%, with half payable on 20 March and the remainder on 20 November.

**Dividends Paid.** In general, dividends paid are subject to withholding tax at a rate of 28%. However, this rate may be reduced under certain circumstances. No withholding tax is imposed on dividends paid to companies if the recipient is a company owning at least 15% of the share capital of the payer for a period of 12 consecutive months that includes the date of the distribution of the dividends. The 12-month holding period requirement may be satisfied after the dividends are distributed. If the recipient is a foreign company, one of the following additional conditions must be satisfied: a tax treaty between Denmark and the country of residence of the recipient of the dividend provides that Denmark must eliminate or reduce the withholding tax on dividends; or the recipient is resident in a European Union (EU) member state and falls within the definition of a company under Article 2 of the EU Parent-Subsidiary Directive (90/435/EEC).

**Interest Paid.** In general, interest paid to foreign group companies is subject to withholding tax at a rate of 30%. The withholding tax rate may be reduced to 0% if any of the following requirements are satisfied:

- The interest is not subject to tax or taxed at a reduced rate under the provisions of a double tax treaty. For example, if withholding tax on interest is reduced to 10% under a double tax treaty, the withholding tax is eliminated completely.
- The interest is not subject to tax in accordance with the EU Interest/Royalty Directive. Under the directive, interest is not subject to tax if both of the following conditions are satisfied:
  - The debtor company and the creditor company fall within the definition of a company under Article 3 in the EU Interest/Royalty Directive (03/49/EEC); and
  - The companies have been associated for at least 24 months. Under the Danish rules, the holding period is reduced to a minimum of 12 months.
- The interest accrues to a foreign company's permanent establishment in Denmark.
- The interest accrues to a foreign company in which the Danish company, indirectly or directly may exercise control (for example, by holding more than 50% of the voting power).
- The interest is paid to a recipient that is controlled by a foreign parent company resident in a country that has entered into a tax treaty with Denmark and has CFC rules if, under these foreign CFC rules, the recipient may be subject to CFC taxation.
- The recipient company can prove that the foreign taxation of the interest income amounts to at least 3/4 of the Danish corporate income tax and that it will not in turn pay the interest to another foreign company that is subject to corporate income tax amounting to less than 3/4 of the Danish corporate income tax.

The above measure and the exceptions also apply to non-interest bearing loans that must be repaid with a premium by the Danish debtor company.

### **C. Determination of Trading Income**

**General.** Taxable income is based on profits reported in the annual accounts, which are prepared in accordance with generally accepted accounting principles. For tax purposes, several adjustments are made, primarily concerning depreciation and write-offs of inventory.

Expenses incurred to acquire, ensure and maintain income are deductible on an accrual basis. Certain expenses, such as certain gifts, income taxes and formation expenses, are not deductible. However, market research expenses and lawyers' and accountants' fees incurred in establishing or expanding an enterprise are deductible. Only 25% of business entertainment expenses are deductible for tax purposes.

**Inventories.** Inventory may be valued at historical cost or at the cost on the balance sheet at the end of the income year. Inventory may also be valued at the production price if the goods are produced in-house. Indirect costs, such as freight, duties and certain other items, may be included.

**Dividends Received.** Dividends received by a Danish parent company from its Danish or foreign subsidiary are exempt from tax. A company is considered a subsidiary if the parent company owns 15% or more of the share capital of the subsidiary for a period of 12 consecutive months that includes the date of distribution of the dividends. The 12-month holding period requirement may be fulfilled after the date of distribution. In addition, one of the following three conditions must be satisfied for dividends received to qualify for tax exemption:

- The subsidiary must be resident in Denmark, a country within the EU or the European Economic Area (EEA), The Faroe Islands, Greenland or a country that has signed a double tax treaty with Denmark;
- The subsidiary must be part of a Danish international joint taxation arrangement (see *Groups of Companies* below); or
- The parent company can exercise control, directly or indirectly, over the subsidiary (for example, by holding more than 50% of the voting power or being able to control the subsidiary through other means).

Sixty-six percent of dividends received from Danish or foreign companies that do not qualify as subsidiaries under the rules described above is included in taxable income and taxed at a rate of 25%.

If none of the three conditions is met, 100% of the dividends received must be included in the taxable income of the parent company, but a tax credit is available for the parent company for taxes paid by the subsidiary and its subsidiaries, if the 15% ownership requirement is met. This rule does not apply if the shareholder owns less than 15% of the shares.

In general, dividends received from a CFC (see Section E) are also exempt from tax if the Danish parent company satisfies the 12-month holding period requirement described above.

### **Depreciation**

*Immediate Deductions.* For the 2008 income year, new acquisitions not exceeding DKK 11,900 or with useful lives not exceeding three years are 100% deductible in the year of purchase. Computer software is also 100% deductible in the year of purchase.

*Asset Classes.* Certain depreciable assets must be allocated among four new asset classes:

- Operating equipment (including production facilities, machinery, office equipment, hardware and certain software that may not be written off immediately) may be depreciated at an annual rate of up to 25%, using the declining-balance method.
- Certain ships (weighing more than 20 tons and leased out without a crew) may be depreciated at an annual rate up to 12%, using the declining-balance method.
- Certain operating equipment with a long economic life (certain ships transporting goods or passengers, aircrafts, rolling railway material, drilling rigs and facilities for producing heat and electricity) may be depreciated at an annual rate of up to 23%, using the declining-balance method. This rate will be decreased by two percentage points every other year until the rate is reduced to 15% in 2016.
- Infrastructural facilities (facilities used for purposes such as, transporting, storing and distributing electricity, water, heat, oil, gas and waste water and facilities with respect to radio, telecommunications and data transmissions may be depreciated at an annual rate of up to 7%, using the declining balance method.

It is important to distinguish between building installations and infrastructural facilities.

*Buildings.* Buildings used for commercial and industrial purposes may be depreciated at an annual rate of up to 4%, using the straight-line method based on the purchase price, excluding the value of the land. Office buildings, financial institutions, hotels, hospitals and certain other buildings may not be depreciated. However, office blocks or office premises adjacent to buildings used for commercial purposes may be depreciated if the office blocks are used together with the depreciable buildings.

*Others.* Acquired goodwill, patent rights and trademarks may be amortized over seven years. Costs incurred in connection with the improvement of rented premises and properties (not used for habitation or other commercial or non-industrial purposes) on leased land may be amortized at an annual rate of up to 20%. If the tenancy is entered into for a fixed number of years, the annual depreciation rate cannot exceed a rate that results in equal amounts of depreciation over the fixed number of years.

*Recapture.* The amount of depreciation claimed on an asset may be recaptured on the disposal of the asset. Recaptured depreciation is subject to tax at a rate of 25%. For assets depreciated under the declining-balance method, however, the consideration received is deducted from the collective declining-balance account, and, consequently, the recapture is indirect.

**Advance Depreciation.** Advance depreciation is available on ships. A total of 30% (with a maximum of 15% in any single year) of the expenditure exceeding DKK 1,360,000 may be written off in the years preceding the year of delivery or completion. The relief is given if a binding contract has been concluded for construction or purchase of a ship. If a partnership enters into the contract, each partner must meet the DKK 1,360,000 requirement. If a ship is intended for lease, advance depreciation is not allowed in the year of acquisition, unless permission is obtained from the local tax authorities. This rule does not apply to the ships included in the new asset classes (see *Depreciation* above).

**Relief for Trading Losses.** Trading losses and interest expenses may be set off against other income and chargeable gains. Losses incurred in the 2002 income year and future years may be carried forward indefinitely.

Losses may not be offset against interest and other capital income, net of interest paid, if more than 50% of the shares in the company changed ownership since the beginning of the year in which the loss was incurred. In addition, tax losses are taken away from companies that are empty (without activity) at the date of change of ownership.

**Groups of Companies.** Joint taxation of Danish affiliated companies, Danish permanent establishments of foreign affiliated companies and real properties of foreign affiliated companies that are located in Denmark is compulsory. The jointly taxed income equals the sum of the income of the permanent establishments and companies.

Joint taxation with foreign companies is voluntary. If a Danish company elects to be jointly taxed with a foreign company, all foreign affiliated companies are included in the Danish joint taxation arrangement. These include all subsidiaries, permanent establishments and real estate owned by the Danish company. If the Danish company is owned by a foreign group, the ultimate foreign parent company and all foreign companies affiliated with the ultimate foreign parent company are also included.

A company is considered to be an affiliated company if a controlling interest exists.

A 10-year period of commitment applies if a Danish company elects to be jointly taxed with its foreign affiliated companies.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax (VAT)	25%
Labor market supplementary pension scheme (ATP); approximate annual employer contribution for each full-time employee	DKK 1,951
Payroll tax (Loensumsafgift)	
Banks, insurance companies and other financial businesses; levied on total payroll	9.13%
Other VAT-exempt businesses; levied on total payroll plus taxable profits, adjusted to exclude financial income and expenses	3.08%
Lotteries and information activities performed by tourist offices and other organizations; levied on total payroll	5.33%
Publishers or importers of newspapers; levied on the value of newspapers sold	2.5%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Denmark does not impose foreign-exchange controls.

**Debt-to-Equity Rules.** Interest paid by a Danish company or branch to a foreign group company is not deductible to the extent that the Danish company's debt-to-equity ratio exceeds 4:1 at the end of the debtor's income year and that the amount of controlled debt exceeds DKK 10 million. Limited deductibility applies only to interest expenses relating to the part of the controlled debt that needs to be converted to equity to satisfy the debt-to-equity rate of 4:1 (a minimum of 20% equity). The limited-deductibility rule also applies to third-party debt if the third party has received guarantees and similar assistance from a foreign group company.

The Danish thin-capitalization rules have been supplemented by an "interest ceiling rule" and an "Earnings Before Interest and Tax (EBIT) rule". These rules apply to both controlled and non-controlled debt. Only companies with net financial expenses exceeding DKK 20.6 million (2008) are subject to these supplementary rules. For jointly taxed companies, the DKK 20.6 million threshold applies to all of these companies together.

Under the "interest ceiling rule", a company may only deduct net financial expenses corresponding to 6.5% (2007 percentage) of the taxable value of certain qualified assets. Deductions for any excess net financial expenses are lost, except for capital losses, which may be carried forward for three years.

Under the "EBIT rule," a company may reduce its taxable income through the deduction of financial expenses by no more than 80%. Net financial expenses exceeding this limit are nondeductible but, in contrast to the interest ceiling rule, the excess expenses can be carried forward to be used in future years (if not restricted again by the EBIT rule). The calculation must be made after taking into account a possible restriction under the interest ceiling rule.

Danish tax law does not recharacterize or impose withholding tax on the disallowed interest. If a company establishes that it could obtain third-party financing on similar terms, it may be permitted to deduct the interest that would normally be disallowed under the ordinary thin-capitalization rules described above. No arm's length principle can be applied to help the company escape the interest ceiling rule or the EBIT rule.

**Antiavoidance Legislation.** The Danish tax law does not include a general antiavoidance provision, but the courts tend to apply a substance-over-form principle.

Although a Danish company or taxable legal entity may change domicile to another country, this would normally be considered a liquidation, with the same tax effect as a sale. The company can transfer its activities abroad, but, to prevent tax avoidance, such a transfer is considered a disposal.

**Controlled Foreign Companies.** Under the controlled foreign company (CFC) legislation, a Danish company, together with other group member companies, holding more than 50% of the voting power of a foreign company must include in taxable income 100% of the taxable income of the subsidiary if the subsidiary is primarily engaged in financial activities. For this purpose, a subsidiary is considered to be primarily engaged in financial activities if more than 50% of the subsidiary's taxable income consists



of net financial income and if more than 10% of the subsidiary's assets are "financial assets" (calculated according to modified Danish tax rules). The CFC rules apply to branches only if the branch is directly held by the Danish company. The income of indirectly held branches is included in the income of its head office.

**Transparency Rule.** Under the transparency rule (Danish anti-Check-the-Box rule), if a Danish company is considered to be transparent under foreign tax rules (for example, the company is taxed as a branch in a foreign country), in principle, the company is also considered to be transparent under Danish tax rules. The rule also implies that a Danish company owned by a U.S. parent company that has "checked the box" on the Danish company cannot deduct interest expenses, royalty expenses or other internal expenses paid to the U.S. parent company. Likewise, expenses paid to other (non-U.S.) group companies are nondeductible if such companies are also transparent under U.S. rules and if the companies' income is included in the U.S. parent company's income. Certain exceptions exist.

**Transfer Pricing.** Transactions between affiliated entities must be determined on an arm's length basis. In addition, Danish companies and Danish permanent establishments must report summary information about transactions with affiliated companies.

Danish tax law requires entities to prepare and maintain written transfer-pricing documentation for transactions that are not considered insignificant. For income years beginning on or after 2 April 2006, enterprises can be fined if they have not prepared any transfer-pricing documentation or if the documentation prepared is considered to be insufficient.

The documentation requirements for small and medium-sized enterprises apply only to transactions with affiliated entities in nontreaty countries that are not members of the EU/European Economic Area (EEA). To qualify as small and medium-sized enterprises, enterprises must satisfy the following conditions:

- They must have less than 250 employees; and
- They must have an annual balance sheet total of less than DKK 125 million or annual revenues of less than DKK 250 million.

The above amounts are calculated on a consolidated basis (that is, all group companies must be taken into account).

## F. Treaty Withholding Tax Rates

	Dividends (a) %	Interest (n) %	Royalties (e) %
Argentina	10 (c)	0 (b)	3/5/10/15
Australia	15	0 (b)	10
Austria (o)	10	0	0 (f)
Bangladesh	10 (l)	0 (b)	10
Belgium	15	0 (b)	0
Brazil	25	0 (b)	15 (g)
Bulgaria	5 (c)	0	0
Canada	5 (c)	0 (b)	10
Chile	5 (c)	0 (b)	5/15
China (m)	10	0 (b)	10
Cyprus	10 (c)	0 (b)	0

	<b>Dividends (a)</b>	<b>Interest (n)</b>	<b>Royalties (e)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Czechoslovakia (i)	15	0	0/5
Egypt	15 (c)	0 (b)	20
Estonia	5 (c)	0 (b)	5/10
Faeroe Islands	0 (l)	0	0
Finland	0 (l)	0	0
France	0	0	0
Germany	5 (l)	0	0
Greece	18	0 (b)	5
Greenland	0 (d)	0	10
Hungary	5 (c)	0	0
Iceland	0 (l)	0	0
India	15 (c)	0 (b)	20
Indonesia	10 (c)	0 (b)	15
Ireland	0 (c)	0	0
Israel	5 (c)	0 (b)	10
Italy	0 (c)	0 (b)	0/5
Jamaica	10 (c)	0 (b)	10
Japan	10 (c)	0 (b)	10
Kenya	20 (c)	0 (b)	20
Korea	15	0 (b)	10/15
Latvia	5 (c)	0 (b)	5/10
Lithuania	5 (c)	0 (b)	5/10
Luxembourg	5 (c)	0	0
Macedonia	5 (c)	0	10
Malaysia	0	0 (b)	0
Malta	0 (c)	0	0
Mexico	0 (c)	0 (b)	10
Morocco	10 (c)	0 (b)	10
Netherlands	0 (l)	0	0
New Zealand	15	0 (b)	10
Norway	0 (l)	0	0
Pakistan	15	0 (b)	12
Philippines	10 (c)	0 (b)	15
Poland	0 (c)	0 (b)	5
Portugal	0 (c)	0 (b)	10
Romania	10 (c)	0 (b)	10
Russian Federation	10	0	0
Singapore	0 (c)	0 (b)	10
Slovenia	5 (c)	0 (b)	5
South Africa	5 (c)	0	0
Spain	0 (c)	0 (b)	6
Sri Lanka	15	0 (b)	10
Sweden	0 (l)	0	0
Switzerland	0	0	0
Taiwan	10	0 (b)	10
Tanzania	15	0 (b)	20
Thailand	10	0 (b)	5/15
Trinidad and Tobago	10 (c)	0 (b)	15
Tunisia	15	0 (b)	15
Turkey	15 (c)	0 (b)	10
Uganda	10 (c)	0 (b)	10
Ukraine	5 (c)	0 (b)	10
USSR (h)	15	0	0
United Kingdom	5 (c)	0	0
United States	5 (l)	0	0

	<b>Dividends (a)</b>	<b>Interest (n)</b>	<b>Royalties (e)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Venezuela	5 (c)	0 (b)	5/10
Vietnam	5 (k)	0 (b)	5/15
Yugoslavia (j)	5 (c)	0	10
Zambia	15	0 (b)	15
Nontreaty countries	28	0/30 (b)	30

- (a) Under Danish domestic law, no withholding tax is imposed on dividends paid to companies if both of the following requirements are satisfied:
- The recipient owns at least 15% (2008 percentage) of the share capital of the payer for a period of 12 consecutive months that includes the date of the distribution of the dividends. The 12-month holding period requirement may be satisfied after the dividends are distributed.
  - A tax treaty between Denmark and the country of residence of the recipient of the dividend provides that Denmark must eliminate or reduce the withholding tax on dividends, or the recipient is resident in a European Union (EU) member state and falls within the definition of a company under Article 2 of the EU Parent-Subsidiary Directive (90/435/EEC).
- (b) Effective from the 2006 income year, withholding tax on interest paid to individuals is abolished.
- (c) The rate is 15% (Portugal and Singapore, 10%; Egypt, Indonesia, Trinidad and Tobago, and Turkey, 20%; India and Morocco, 25%; Kenya, 30%) if the recipient is not a company owning at least 25% of the capital (Japan and Trinidad and Tobago, 25% of the voting shares; Israel, 50% of the voting shares; Spain, 50% of the capital).
- (d) The withholding tax rate is 0% if all of the following conditions are satisfied:
- The recipient directly owns at least 25% of the share capital of the payer for a period of 12 consecutive months that includes the date of the distribution of the dividend;
  - The dividend is not taxed in Greenland; and
  - The recipient does not deduct the portion of a dividend distributed by it that is attributable to the Danish subsidiary.
- If the above conditions are not met, the withholding tax rate is 28%.
- (e) Under Danish domestic law, the rate is 0% for royalties paid for the use of, or the right to use, any copyrights of literary, artistic or scientific works, including cinematographic films, and for the use of, or the right to use, industrial, commercial or scientific equipment. Under a tax treaty, the general withholding tax rate for royalties of 30% can be reduced to as low as 0%. Royalties paid to a company resident in another EU country are not subject to withholding tax if the provisions of the EU Interest/Royalty Directive are met.
- (f) The withholding tax rate is 10% if the royalties are paid to an individual holding more than 50% of the paying company [see footnote (e)].
- (g) The rate is 25% for payments for the use of, or the right to use, trademarks.
- (h) Denmark honors the USSR treaty with respect to the former USSR republics. Azerbaijan, Moldavia, Tajikistan and Uzbekistan have declared that they do not consider themselves obligated by the USSR treaty. Armenia, Georgia, Belarus and Kyrgyzstan have not yet declared whether they consider themselves obligated by the USSR treaty. Denmark has entered into tax treaties with Estonia, Latvia, Lithuania and Ukraine.
- (i) Denmark honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (j) Denmark honors the Yugoslavia treaty with respect to Croatia, the Federal Republic of Yugoslavia (Montenegro and Serbia) and Slovenia. Denmark has entered into a tax treaty with Slovenia. The withholding rates under this treaty are listed in the table.
- (k) The rate is 5% if the recipient is a company that owns at least 70% of the capital of the payer or has invested at least US\$12 million in the capital of the payer. The rate is 10% if the recipient is a company owning at least 25%, but less than 70%, of the capital of the payer. For other dividends, the rate is 15%.
- (l) The rate is 15% if the recipient is not a company owning at least 10% of the shares of the payer.
- (m) The treaty does not cover Hong Kong.
- (n) In general, all interest payments to foreign group companies are subject to a final withholding tax of 30%. Several exceptions exist (see Section B). As a result of these exceptions, in general, withholding tax is imposed only on interest payments made to group companies that would qualify as CFC companies for Danish tax purposes.
- (o) A new double tax treaty with Austria has been signed, but not yet implemented. Under the new treaty, the dividend withholding tax rate will be 0% if the recipient is a company owning at least 10% of the payer. For other dividends, the rate will be 15%.

# DOMINICAN REPUBLIC

(Country Code 1)

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## A. At a Glance

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	25 (a)(b)
Interest	25 (b)(c)
Royalties	25 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The entity paying the dividends may use the withholding tax as a credit against the corporate income tax liability.  
 (b) This is a final tax applicable to payments to both residents and nonresidents.  
 (c) A 10% rate applies to interest paid to foreign financial institutions.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident corporations are subject to tax on Dominican-source income and on foreign investment income, such as dividends and interest. Nonresident corporations are subject to tax on Dominican-source income only.

A company is resident in the Dominican Republic if it is incorporated in the Dominican Republic or if it has its principal business location in the Dominican Republic. Permanent establishments are considered separate legal entities and are subject to income tax as companies incorporated in the Dominican Republic.

**Corporate Income Tax Rates.** The corporate income tax rate is 25% for resident and nonresident companies.

Companies established in designated free-trade zones are granted full exemption from all taxes and fiscal charges for periods of up to 15 years or 20 years, depending on the location.

On 13 July 2007, The World Trade Organization Committee on Subsidies and Countervailing Measures agreed to adopt the text of a draft decision of the General Council to continue procedures for the extension until 2015 of the transition period for the elimination of the export subsidy programs of 19 developing countries, including the Dominican Republic.

Ordinary taxable income includes gains and losses from the sale of assets, regardless of whether the assets are used in the ordinary course of a trade or business.

**Capital Gains.** Under the Tax Code, capital gains may arise from the transfer of shares, intangibles and land. The tax cost for such assets equals the original cost plus indexation adjustments.

**Administration.** In general, the tax year is the calendar year. However, companies may adopt a fiscal year ending on 31 March, 30 June or 30 September.

All companies must make monthly advance payments equal to  $\frac{1}{12}$  of their final income tax liability for the preceding tax year or 1.5% of their gross income, whichever is higher. If the total of the advance payments exceeds the final tax liability for the corresponding year, the excess can be credited against advance payments for the following tax years.

An extension of two months to file the income tax return may be requested. However, interest is charged on any balance of tax due at a monthly rate of 1.73%. Payments made after this period are subject to penalties of 10% for the first month and 4% for each month or fraction of a month thereafter.

**Dividends.** Dividends are subject to a final withholding tax of 25%. The payer may use the tax as a credit against the corporate income tax liability.

**Foreign Tax Relief.** Foreign tax paid on income derived from investments and interests located outside the Dominican Republic may be claimed as a credit against the income tax payable in the Dominican Republic. However, such credit is limited to the portion of Dominican Republic tax allocable to the foreign-source income subject to tax abroad.

### C. Determination of Trading Income

**General.** Tax is imposed on taxable profits, which correspond to the accounting profits adjusted in accordance with the income tax law.

Expenses incurred to generate taxable income and preserve the source of such income are deductible on an accrual basis if properly documented. However, certain expenses are not deductible, including the following:

- Expenses not properly documented;
- Interest related to the purchase of capital stock;
- Unauthorized bad debt provisions;
- Prior-period tax adjustments; and
- Amortization of certain intangible assets.

**Special Industries.** Rules applicable to special industries are outlined below.

*Nonresident Insurance Companies.* For nonresident insurance companies, the tax authorities may deem a minimum amount of imputed income. The amount of minimum imputed income equals 10% of the gross income derived from insurance services rendered to resident companies or individuals.

*Transportation.* Special sourcing rules apply to nonresident transportation companies. Under these rules, income derived from transport services rendered from the Dominican Republic to other countries is deemed to be Dominican-source income. In addition,

imputed income equal to 10% of gross income is deemed for nonresident transportation companies, unless the companies provide documentary evidence to the contrary.

*Others.* The minimum Dominican-source income for film distribution companies is deemed to be 15% of sales, and for communications companies, 15% of gross income.

**Inventories.** In general, last-in, first-out (LIFO) is the approved method for valuing inventory. However, other methods may be used if previously approved by the tax authorities. General provisions or reserves cannot be used in the determination of stock value.

**Provisions.** Provisions for employees' holiday pay and bad debts are allowed if they are calculated in accordance with the law.

**Tax Depreciation and Amortization Allowances.** Depreciation is calculated using a variation of the declining-balance method. Intangibles, such as patents, models, drawings and copyrights, may be amortized using the straight-line method if they have a definite useful life.

Salvage value is not taken into account in calculating depreciation. The following are the generally applicable depreciation rates provided by law.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	5
Light vehicles and office equipment, including computers	25
Other assets	15

**Relief for Losses.** Losses generated by companies in the ordinary course of a trade or business may be carried forward for a five-year period. In each fiscal year, 20% of the total loss can be used to offset taxable income. However, in the fourth and fifth years, only 80% and 70%, respectively, of the total taxable income may be offset by the 20% loss carry forward. Losses derived from reorganizations are not deductible for income tax purposes. Net operating losses may not be carried back.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax; standard rate	16
Social security contributions	
Health contributions; imposed on salary up to a maximum amount of 10 legal minimum wages (RD\$56,350 or approximately US\$1,660)	
Employer	6.67
Employee	2.86
Pension contributions; imposed on salary up to a maximum amount of 20 legal minimum wages (RD\$112,700 or approximately US\$3,320)	
Employer	6.42
Employee	2.58

Nature of Tax	Rate (%)
Labor risk contributions; payable by employer on salary; rate varies according to the risk level of the company's activity	1.2 to 1.6
Workers' compensation insurance	Various
Telecom Tax; imposed on the consumption of telecom services by legal entities and individuals in the Dominican Republic; tax rate applied to gross payment	10
Tax on financial transactions; imposed on the value of checks and wire transfer transactions and on payments made to third parties (the tax applies even if the wire transfer is made to an account in the same bank)	0.015

### E. Foreign-Exchange Controls

The Banco Central de la República Dominicana (central bank) has liberalized foreign-exchange controls. Only individuals and companies generating foreign currency from exports, services rendered and other specified activities are required to exchange foreign currency with the central bank through commercial banks. The central bank is not required to furnish foreign currency to satisfy demands for foreign payments. Individuals and companies may buy foreign currency from, or sell it to, commercial banks.

### F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Canada	18	18	18
Nontreaty countries	25	25*	25

\* A 10% rate applies to interest paid to foreign financial institutions.

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*Because of the frequent changes to the tax law in Ecuador in recent years, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	0 (b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%) (c)	
Dividends	0
Interest	0 (d)
Royalties	25
Technical Assistance	25
Services	25
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (e)

- (a) Companies that reinvest their profits in Ecuador are entitled to a reduction of 10% in the corporate income tax rate on the reinvested amount (that is, the reinvested profits are taxed at 15%) if they retain the reinvested profits until 31 December of the tax year following the tax year in which the profits are earned.
- (b) Capital gains derived from sales of shares are exempt from tax if the sales are “occasional” sales, which are sales that are not made in the ordinary course of business of the company.
- (c) These withholding taxes are imposed on remittances abroad to nondomiciled companies and nonresident individuals. The withholding tax rates may be reduced under tax treaties. For further details concerning withholding taxes, see Section B.
- (d) No withholding tax is imposed on interest remitted abroad if the foreign loan is registered with the Ecuadorian Central Bank and if the interest rate does not exceed the rates approved by the Central Bank. Otherwise, a 25% withholding tax is imposed.
- (e) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporate income tax is levied on companies domiciled in Ecuador and on foreign companies. Companies domiciled in Ecuador include those incorporated in Ecuador and companies incorporated in foreign countries that have been approved as branches by the Superintendene of Companies after a legal proceeding. Companies incorporated in Ecuador are subject to tax on their worldwide income. Foreign companies are subject to tax on income derived from activities within Ecuador and from goods and assets located within Ecuador.

**Rate of Corporate Tax.** The standard rate of corporate income tax is 25%. Companies that reinvest their profits in Ecuador are entitled to a reduction of 10% in the corporate income tax rate on the

reinvested amount (that is, the reinvested profits are taxed at 15%) if they retain the reinvested profits until 31 December of the tax year following the tax year in which the profits are earned.

**Capital Gains.** Capital gains derived from sales of shares are exempt from tax if the sales are “occasional” sales, which are sales that are not made in the ordinary course of business of the company. Losses on sales between related parties are not deductible.

A bill has been introduced to eliminate the above exemption.

**Administration.** The normal fiscal year runs from 1 January to 31 December. No other closing dates are permitted, regardless of the date a business begins operations. Returns must be filed between 1 April and 28 April.

Companies must make an advance payment of tax equal to 50% of the income tax for the preceding year less withholding tax paid in such year. The amount of the advance payment is calculated in the annual tax return. The advance payment is payable in two installments which are due in July and September.

The penalty for late filing is 3% the income tax due for each month or fraction of a month of the delay, up to a maximum of 100% of the tax due. Interest at the maximum legal rate, which floats, is levied on all increases in tax assessments from the date the tax was originally due to the date of payment.

**Withholding Taxes.** A 25% withholding tax is generally imposed on the following payments abroad: royalties and payments for technical assistance to nondomiciled companies and nonresident individuals; payments to nonresident individuals for services rendered; and payments to nondomiciled companies for professional services rendered abroad or occasional services rendered in Ecuador.

A 5% withholding tax is imposed on local payments of interest by banks and other financial institutions.

Penalties are imposed for failures to comply with the withholding requirements. A penalty of 5% of the withheld amount is imposed on withholding agents failing to provide taxpayers with tax withholding slips. Prison terms of one month to five years are imposed on withholding agents who repeatedly fail to make timely deposits of withheld amounts. The prison term is set after the corresponding legal procedure for the imposition of the penalty is carried out.

**Dividends.** Gross dividends received from Ecuadorian corporations are exempt from withholding tax and income tax. Dividends received by Ecuadorian corporations from foreign corporations are included in taxable income and subject to corporate income tax at the regular rate of 25%. However, a tax credit is allowed for underlying foreign taxes paid by a foreign corporation on the profits out of which dividends are paid.

**Foreign Tax Relief.** Ecuador does not grant relief for foreign taxes paid to companies domiciled in Ecuador.

### **C. Determination of Trading Income**

**General.** Taxable income is based on accounting profits after the corresponding tax reconciliation adjustments.

In computing taxable income, a company can deduct normal expenses incurred in producing income, including production and distribution costs, interest charges, royalty payments and depreciation. Also, employee profit-sharing distributions (15% of pre-tax profits) can be deducted before computing taxes. Special provisions govern the computation of taxable profits from the export of petroleum, maritime transportation and video films.

Expenses incurred abroad are generally deductible, provided appropriate taxes are withheld if the payment constitutes taxable income for the payee. The following payments abroad are deductible within specified limitations:

- Payments for imports, including interest and financing fees, as provided in import licenses.
- Export fees of up to 2% of the export value.
- Interest and commissions with respect to foreign loans registered at the Ecuadorian Central Bank. The maximum allowable rate is the London interbank offer rate (LIBOR).

Nondeductible expenses include the following:

- Interests on foreign loans, to the extent the interest rate exceeds the limit established by the Central Bank Board (the maximum rate is LIBOR), and interest on foreign loans not registered at the Ecuadorian Central Bank; and
- Losses on sales of assets between related parties.

**Inventories.** Inventory is generally stated at cost (calculated using the average, last-in, first-out [LIFO], first-in, first-out [FIFO] or actual methods). Inventory write-offs must be documented through a sworn statement that the inventory was destroyed or donated.

**Tax Depreciation and Amortization.** Depreciation and amortization expenses are deductible for income tax purposes. The tax law provides the following maximum straight-line depreciation rates applicable for tax purposes.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings, aircraft and ships	5
Office equipment	10
Motor vehicles, trucks and computers	20
Plant and machinery	10

For tax purposes, as a general rule, expenditures to acquire property and other assets that produce revenue must be amortized over 5 years, using a straight-line depreciation rate of 20%. Intangibles must be amortized over either the term of the relevant contract or a 20-year period.

The tax authorities may approve other methods and annual rates for depreciation and amortization.

Organizational costs may be amortized over a 10-year period. Research and development expenses are generally written off over five years.

Depreciation of fixed assets in excess of their original cost is permitted if business assets are revalued as a result of inflation or increased replacement costs.

**Relief for Losses.** Net operating losses may be carried forward and offset against profits in the following five years, provided that the amount offset does not exceed 25% of the year's profits. Loss carrybacks are not permitted.

**Groups of Companies.** No measures exist for filing consolidated returns and relieving losses within a group.

#### D. Value-Added Tax

A 12% value-added tax (VAT) is levied on most sales and commercial transactions, imports and most services. Food products in their natural state, as well as drugs and veterinary products, are exempt from VAT.

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** All transactions in Ecuador must be conducted in U.S. dollars.

**Free-Trade Zone.** The signatories of the Andean Community or the former Andean Pact (Bolivia, Colombia, Ecuador, Peru and Venezuela) have entered into a free-trade agreement. However, Peru signed the agreement with some restrictions. Under the agreement, merchandise and goods manufactured in one of the signatory countries may enter the other signatory countries free of customs duties. All items imported from other countries are subject to a common external customs duty.

#### F. Treaty Withholding Tax Rates

Under an agreement with Bolivia, Colombia, Peru and Venezuela (the Andean Pact), income earned in those countries is generally not taxed in Ecuador to avoid double taxation. The withholding tax rates under Ecuador's bilateral treaties are shown in the table below. The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends (a)	Interest (b)	Royalties
	%	%	%
Belgium	0	0	10
Brazil	0	0	15 (c)
Canada	0	0	10/15
Chile	0	0	10/15
France	0	0	15
Germany	0	0	15
Italy	0	0	5
Mexico	0	0	10
Romania	0	0	10
Spain	0	0	5/10
Switzerland	0	0	10
Nontreaty countries	0	0	25

- (a) Dividends are exempt from withholding tax under Ecuadorian domestic law if corporate income tax was paid on the profits out of which the dividends were distributed.
- (b) No withholding tax is imposed on interest remitted abroad if the foreign loan is registered at the Ecuadorian Central Bank and if the interest rate does not exceed the rates approved by such bank. Otherwise, a 25% withholding tax is imposed on the excess interest.
- (c) Trademark royalties are taxed at a rate of 25%.

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### A. At a Glance

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Branch Tax Rate (%)	20
Withholding Tax (%)	
Dividends	0
Interest	20 (a)
Royalties from Patents, Know-how, etc.	20 (a)
Certain Services Provided by Nonresident Entities	20 (a)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	Unlimited (b)
Carryforward	5

(a) This is a final tax imposed on gross payments. The rate may be reduced under a tax treaty. Exemptions may apply in certain circumstances.

(b) Losses incurred in long-term projects may be carried back to offset profits from the same project for an unlimited number of years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Egyptian corporations are subject to corporate profits tax on their profits derived from Egypt, as well as on profits derived from abroad, unless the foreign activities are performed through a permanent establishment located abroad. Foreign companies resident in Egypt are subject to tax only on their profits derived from Egypt.

**Rates of Corporate Income Tax.** The standard rate of corporate profit tax is 20%. However, exceptions to this rate exist.

Oil prospecting and production companies are subject to tax on their profits at a rate of 40.55%.

The Suez Canal Company, the Egyptian General Petroleum Company and the Central Bank of Egypt are subject to tax on their profits at a rate of 40%.

**Capital Gains.** Tax on capital gains is calculated at the ordinary corporate profits tax rates in the same manner as ordinary business profits and is not calculated separately. Trading and capital losses derived from sales of other assets are deductible against taxable capital gains.

**Administration.** Companies must file their annual tax returns, together with all supporting schedules and the original financial statements, before 1 May of each year, or four months after the end of the financial year. The tax return must be signed by the taxpayer. Taxpayers can file a request for an extension of the due date for filing the tax return if the estimated amount of tax is paid at the time of the request. A request for an extension must be filed at least 15 days before the due date. An extension of up to 60 days may be granted. An amended tax return can be filed within 30 days after the original due date.

Any tax due must be paid when the tax return is filed.

A late penalty is imposed at a rate of 2% plus the credit and discount rate set by the Central Bank of Egypt in January of each year.

The law has set up appeals committees at two levels — the Internal Committee and the Appeal Committee. The Appeal Committee's decision is final and binding on the taxpayer and the tax department, unless a case is appealed by either one to the court within 30 days of receiving the decision, which is usually in the form of an assessment.

**Dividends.** Dividends distributed by Egyptian companies are not subject to withholding tax because they are paid out of corporate profits that are taxed under the normal rules.

Dividends received by residents from foreign sources are taxed in Egypt.

**Withholding Tax.** In general, payments for all services performed by nonresident companies for Egyptian companies in or outside Egypt are subject to withholding tax at a rate of 20%. However, this withholding tax does not apply to payments related to the following activities:

- Transportation;

- Shipping;
- Insurance;
- Training;
- Participation in conferences and exhibitions;
- Registration in foreign stock markets; and
- Advertising campaigns.

**Foreign Tax Relief.** Foreign tax paid by resident entities outside Egypt can be deducted if supporting documents are available.

Treaties entered into between Egypt and other countries provide a credit for taxes paid abroad on income subject to corporate income tax in Egypt.

### **C. Determination of Taxable Income**

**General.** Corporate income tax is based on taxable profits computed in accordance with generally accepted accounting and commercial principles, modified for tax purposes by certain statutory provisions primarily concerning depreciation, provisions, inventory valuation, intercompany transactions and expenses. Dividends are exempt from tax. Interest on bonds listed on the Egyptian stock exchange is exempt from tax if certain conditions are satisfied.

Start-up and formation expenses may be deducted in the first year.

The deductibility of a branch's share of head office overhead expenses is limited to 7% of the taxable net profit. Head-office expenses are fully deductible if they are directly incurred by the branch and are necessary for the performance of the branch's activity in Egypt. Such expenses must be supported by original documents and approved by the head office auditors.

Interest paid on loans and overdrafts with respect to a company's activities is deductible after offsetting interest income. Interest paid to individuals who are not subject to tax or exempt from tax is not deductible. Deductible interest is limited to the interest computed at a rate equal to twice the discount rate determined by the Central Bank of Egypt.

**Inventories.** Inventory is normally valued for tax purposes at the lower of cost or market value. Cost is defined as purchase price plus direct and indirect production costs. Inventory reserves are not permissible deductions for tax purposes. For accounting purposes, companies may elect to use any acceptable method of inventory valuation, such as first-in, first-out (FIFO) or average cost. The method should be applied consistently, and if the method is changed, the reasons for such change should be stated.

**Provisions.** Provisions are not deductible except for the following:

- Provision for 80% of loans made by banks, which is required by the Central Bank of Egypt; and
- Insurance companies' provision determined under Law No. 10 of 1981.

Bad debts are deductible if the company provides a report from an external auditor certifying the following:

- The company is maintaining regular accounting records;
- The debt is related to the company's activity;
- The debt appears in the company's records; and
- The company has taken the necessary action to collect the debt.

**Depreciation and Amortization Allowances.** Depreciation is deductible for tax purposes and may be calculated using either the straight-line or declining-balance method. The following are the depreciation rates.

Type of Asset	Method of Depreciation	Rate (%)
Buildings	Straight-line	5
Intangible assets	Straight-line	10
Computers	Declining-balance	50
Heavy machinery and equipment	Declining-balance	25
Small machinery and equipment	Declining-balance	25
Vehicles	Declining-balance	25
Furniture	Declining-balance	25
Other tangible assets	Declining-balance	25

Accelerated depreciation is allowable only once at a rate of 30% on new machines and equipment in the year in which they are placed into service.

Normal depreciation is calculated after taking into account the accelerated 30% depreciation on the net value of new assets, provided that proper books of account are maintained.

**Relief for Losses.** Tax losses may be carried forward for five years. Losses incurred in long-term projects may be carried back for an unlimited number of years to offset profits from the same project.

Losses incurred outside Egypt cannot be offset against taxable profits in Egypt.

**Groups of Companies.** Associated or related companies in a group are taxed separately for corporate income tax purposes. Egyptian law does not contain a concept of group assessment under which group losses may be offset against profits within a group of companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Sales tax	Various
Customs duties	
General, ad valorem	Various
On value of machinery needed for investments by companies	5
Stamp duties on bills, promissory notes and letters of guarantee as well as most types of documents, contracts, checks and receipts (shares and bonds listed on the Egyptian Stock Exchange are exempt)	Various
Social insurance	
On monthly base salary, up to LE 750; paid by	
Employer	26
Employee	14
On amount in excess of LE 750 of the base salary, with a maximum excess amount of LE 500 a month; paid by	



Nature of Tax	Rate (%)
Employer	24
Employee	11
On contract labor force	18

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Egypt has a free-market exchange system. Exchange rates are determined by supply and demand, without interference from the central bank or the Ministry of the Economy.

**Debt-to-Equity Rules.** Under the new tax law, the maximum debt-to-equity ratio is 4:1. If the debt exceeds such ratio, the excess interest may not be claimed as a deductible expense. However, the law has established a transition period of five years to allow companies that currently exceed the debt-to-equity ratio to change their position to comply with the ratio. The following are the ratios accepted by the tax authorities during the transition period:

Year	Ratio
2005	8:1
2006	7:1
2007	6:1
2008	5:1
2009	4:1

**Transfer Pricing.** The Egyptian tax law contains measures regarding transfer pricing, which are based on the arm's length principle. Under these measures, the tax authorities may adjust the income of an enterprise if its taxable income in Egypt is reduced as a result of contractual provisions that differ from those that would be agreed to by unrelated parties. However, under the new tax law, it is possible to enter into arrangements in advance with the tax department regarding a transfer-pricing policy (Advance Pricing Arrangement). An Advance Pricing Arrangement ensures that transfer prices will not be challenged after the tax return is submitted and, accordingly, eliminates exposure to penalties and interest on the late payment of taxes resulting from adjustments of transfer prices.

## F. Treaty Withholding Tax Rates

Dividends paid to nonresidents are not subject to withholding tax under Egyptian domestic law. Consequently, the following table sets forth maximum withholding rates provided in Egypt's tax treaties for interest and royalties only.

	Interest (%)	Royalties (%)
Albania	10	10
Algeria	5	10
Austria	15	0
Bahrain	According to domestic law in each country	According to domestic law in each country
Belarus	10	15
Belgium	15	15/20
Bulgaria	12.5	12.5
Canada	15	15
China	10	8

	<b>Interest (%)</b>	<b>Royalties (%)</b>
Cyprus	15	10
Czech Republic	0	10
Denmark	15	20
Finland (a)		
From Finland	0	20
From Egypt	20	20
France	20	Trademarks 20
		Other 15
Germany	15	Trademarks 20
		Other 15
Greece	10	10
Hungary	15	15
India	20	According to domestic law in each country
Indonesia	15	15
Iraq		
From Iraq	10	15
From Egypt	20	15
Italy	20	15
Japan	20	15
Jordan	15	20
Korea (South)	10/15	15
Kuwait	10	10
Lebanon	10	5
Libya	20	20
Malaysia	15	15
Malta	10	12
Morocco	20	10
Netherlands	12	12
Norway		
From Norway	0	0
From Egypt	20	15
Pakistan	0	15
Palestine	15	15
Poland	12	12
Romania (c)	15	15
Russian Federation	15	15
Serbia and Montenegro	15	15
Singapore	15	15
South Africa	12	15
Spain	10	12
Sudan	20	Films 3
		Other 10
Sweden	15	14
Switzerland	15	12.5
Syria	15	20
Tunisia	10	15
Turkey	10	10
Ukraine	12	12
United Arab Emirates	10	10
United Kingdom	15	15
United States	15	15
Yemen	10	10
Yugoslavia (b)	15	15
Nontreaty countries	20	20

- (a) A final draft of a new tax treaty with Finland was initiated on 17 September 1997, but the new treaty has not yet been ratified.
- (b) The treaty with Yugoslavia applies to the republics that formerly comprised Yugoslavia.
- (c) This treaty is being renegotiated.

Egypt has signed double tax treaties with Armenia, Bangladesh, Ireland, Kazakhstan, Mongolia, Oman, Senegal, Seychelles, the Slovak Republic, Sri Lanka, Tanzania, Thailand, Uganda and Vietnam, but these treaties have not yet been ratified. Tax treaty negotiations are under way with Congo, Macedonia and North Korea.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	10/25 (a)
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	0 (a)
Interest	
Paid to Domiciled Companies	10 (b)
Paid to Nondomiciled Companies and Individuals	20 (c)
Royalties from Know-how and Technical Services	20 (d)
Lottery Prizes and Other Prize Winnings	25 (d)
Other Payments Made to Nonresidents	20 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	0 (e)

- (a) See Section B.
- (b) This withholding tax applies to interest received by companies on bank deposits. Interest paid between domiciled companies is not subject to withholding tax.
- (c) If the recipient does not file an annual income tax return, the withholding tax is presumed to be a payment in full of the income tax on the interest income. The withholding tax does not apply if the recipient of the interest is a bank or financial institution registered with the Central Reserve Bank of El Salvador.
- (d) This withholding tax is imposed on payments to foreign companies and individuals for services rendered or used in El Salvador, as well as on payments for the transfer of intangible assets. If the recipient does not file an annual income tax return, the withholding tax is presumed to be a payment in full of the income tax on the income.
- (e) Capital losses can be carried forward to offset capital gains for a period of five years.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** The Salvadorian tax system is based on the territorial principle. As a result, income derived from the following is subject to income tax:

- Movable and immovable property in El Salvador;
- Activities carried out in El Salvador; and

- Services rendered by domiciled and nondomiciled entities that are used in El Salvador.

In general, companies incorporated in El Salvador that derive income from activities carried on outside the country are not taxed on such income.

**Corporate Income Tax Rate.** The standard rate of income tax is 25% for Salvadorian companies, foreign companies with a permanent establishment in El Salvador and nondomiciled companies.

**Capital Gains.** Capital gains derived from the sale of movable and immovable property are subject to income tax at a rate of 10%. However, if the asset is sold within 12 months after acquisition, the capital gain is subject to tax at a rate of 25%.

Capital gains derived from transfers of real estate are taxable under the rules applicable to capital gains, unless the seller owned the property for at least six years before the sale. In these circumstances, the capital gain is exempt from tax. Companies may carry forward capital losses for a five-year period to offset future capital gains only.

The capital gain or loss on a transaction is computed by deducting from the sales proceeds the following: the cost of the asset; improvements made to the asset; and all selling expenses necessary to complete the transaction. The cost of the asset equals the purchase price less allowable depreciation claimed under the income tax law.

**Administration.** The statutory tax year runs from 1 January through 31 December. Companies must file annual income tax returns and pay any tax due within four months after the end of the tax year.

Companies with total assets of SVC 10 million (approximately US\$1,142,857) or more, or with gross income of SVC 5 million (approximately US\$571,428) or more, must file an annual tax certification of their tax obligations. This certificate is issued by an external certified public accountant (CPA) who is authorized by the CPA Surveillance Council.

**Dividends.** Dividends are not subject to income tax to the extent that the distributing company had already filed an income tax return and paid income tax at the corporate level on the distributed income. Dividends remitted abroad are exempt from withholding tax if the distributing company has declared and paid income tax at the corporate level on the distributed income.

**Foreign Tax Relief.** No relief is granted in El Salvador for foreign taxes paid.

### **C. Determination of Trading Income**

**General.** Taxable income is computed in accordance with Adopted Financial Information Standards in El Salvador (International Financial Reporting Standards, effective from October 2003), subject to adjustments required by the Salvadorian income tax law. The Salvadorian income tax law requires the use of the accrual method of accounting.

Taxable income includes all income derived from assets located in the country, from transactions carried out in the country and from

services rendered or used in El Salvador, even if the services are rendered outside El Salvador. In general, all costs and expenses necessary to produce and conserve taxable income are deductible for income tax purposes.

**Imputed Income.** The Salvadorian income tax law does not contain rates and formulas for calculating imputed income. However, the tax authorities may determine taxable income based on certain information, including the following: investments made during the tax year; equity fluctuations; transactions and profits recorded in previous tax years; purchases and sales; value of imported goods; value of inventories; purchases not recorded; performance of similar businesses; and general expenses.

**Inventories.** Salvadorian income tax regulations provide that inventories may be valued at acquisition cost. The cost may be calculated using certain methods, such as first-in, first-out (FIFO), last purchase cost and average cost, as well as special methods established for agricultural products and cattle. The income tax law provides that inventories can be valued by other methods if authorization from the tax authorities is obtained before the method is implemented.

**Provisions.** Provisions for contingent liabilities, such as severance payments and labor costs, are not deductible expenses. However, payments of such liabilities are deductible expenses. Provisions for doubtful accounts may be deducted if certain legal requirements are satisfied.

### Tax Depreciation and Amortization

*Depreciation.* The acquisition cost of products with a useful life of 12 months or less may be fully deducted from taxable income in the year of acquisition. Property with a useful life of more than 12 months may be depreciated using the following straight-line rates.

Asset	Rate (%)
Buildings	5
Machinery	20
Vehicles	25
Other movable property	50

Only a portion of the acquisition cost of used machinery and movable property may be deducted for tax purposes. The deductible percentages, which are based on the asset's life, are shown in the following table.

Asset's Useful Life (Years)	Deductible Percentage (%)
1 but less than 2	80
2 but less than 3	60
3 but less than 4	40
4 or more	20

The useful life of a used asset is determined when the asset is purchased. The depreciable portion of the acquisition cost is calculated according to the normal depreciation rules.

*Tax Amortization.* The acquisition cost or development cost of software programs used to produce and conserve taxable income

may be amortized at an annual rate of 25% of the cost of development or acquisition. The deductible percentages applicable to used machinery (see above) also apply to used software programs.

**Relief for Losses.** Net operating losses may not be carried forward or back to offset taxable income.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; transfers of fixed assets that have been used for two years or more are not subject to transfer taxes	13
Real property transfer tax; tax imposed on value of real property to the extent that it exceeds SVC 250,000 (approximately US\$28,571)	3
Customs duties	Various
Social contributions; paid by employer Prevention system (this system provides pensions and certain other benefits); on salaries up to SVC 46,148 (US\$5,274)	6.75
Social security; on salaries up to SVC 6,000 (US\$685)	
Maternity, sickness and professional risks	7.5
Professional training	1

#### E. Foreign-Exchange Controls

The currencies in El Salvador are the colon (SVC) and the U.S. dollar. Since 2001, all transactions and operations in El Salvador can be carried out and denominated in colons or U.S. dollars. The permanent exchange rate in El Salvador is SVC 8.75 = US\$1.

No restrictions are imposed on foreign-trade operations or foreign-currency transactions.

#### F. Tax Treaties

El Salvador has not entered into any income tax treaties.

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## EQUATORIAL GUINEA

(Country Code 240)

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## A. At a Glance

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35 (b)
Branch Tax Rate (%)	35
Withholding Tax (%)	
Dividends	25 (c)
Interest	25
Royalties from Patents, Know-how, etc.	25
Payments for Oil and Gas Services	6.25/10 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum corporate tax is 1% of turnover. See Section B for details.  
 (b) In certain circumstances, the tax is deferred or reduced (see Section B).  
 (c) This tax is imposed on payments to nonresidents.  
 (d) This tax applies to payments for services performed by subcontractors of oil and gas companies. The 6.25% rate applies to residents. The 10% rate applies to nonresidents.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Equatorial Guinea (EG) companies are taxed on the territorial principle. As a result, EG companies carrying on business outside EG are not subject to corporate income tax in EG on the related profits. EG companies are those registered in EG, regardless of the nationality of the shareholders or where the companies are managed and controlled. Foreign companies engaged in business in EG are subject to corporate income tax on EG-source profits.

**Tax Rate.** The corporate income tax rate is 35%.

The minimum corporate tax is 1% of annual turnover (for further details, see *Administration* below).

**Capital Gains.** Capital gains are taxed at the regular corporate income tax rate. However, the tax can be deferred if all of the proceeds are used to acquire new fixed assets in EG within three years or in the event of a merger. If the business is totally or partially transferred or discontinued, only one-half of the net capital gains is taxed if the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gains is taxed if the event occurs five years or more after the business is begun or purchased.

**Administration.** The tax year is the calendar year. Tax returns must be filed and tax must be paid by 30 April. The minimum tax must be paid by 31 March. The minimum tax may be set off against the regular income tax payable for the same tax year.

Late payments are subject to penalties.

Late payments and late filings of tax returns are subject to penalties. For the minimum corporate tax, the penalty equals 50% of the amount of the tax. For corporate income tax, the penalty equals the sum of the following: FCFA 200,000 per month of delay for the filing of the return; and 50% of the amount not declared.



**Dividends.** Dividends paid to nonresidents are subject to a 25% withholding tax.

Companies normally include dividends received in taxable income. However, a parent company may exclude up to 90% of the dividends received from a 25%-owned subsidiary.

**Foreign Tax Relief.** EG does not provide relief for foreign taxes paid.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the rules contained in the general accounting plan of the Organization for Harmonization of Business Law in Africa (Organisation pour l'Harmonisation en Afrique du Droit des Affaires, or OHADA).

Business expenses are generally deductible unless specifically excluded by law. The following expenses are deductible only if they are normal and substantiated: head office overhead and remuneration for certain services (studies and technical, financial or administrative assistance) paid to nonresidents; and royalties from patents, brands, models or designs paid to a non-CEMAC corporation participating in the management of, or owning shares in, the EG corporation.

The following expenses are not deductible:

- Rent expense for movable equipment paid to a shareholder holding, directly or indirectly, more than 10% of the capital;
- A portion of interest paid to a shareholder in excess of the central bank annual rate and, if the shareholder is in charge of management, on the portion of the loan exceeding one-half of the capital stock;
- Commissions and brokerage fees exceeding 5% of purchased imports;
- Certain specific charges, penalties and corporate tax; and
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director), gifts and subsidies.

**Inventories.** Inventories are normally valued at cost. Cost must be determined under a weighted-average cost price method.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by the tax law. The following are the straight-line depreciation rates for major categories of assets.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	5 to 20
Plant and machinery, and transportation equipment	5 to 100
Office equipment	10 to 15

**Relief for Losses.** Losses may be carried forward three years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** EG law does not allow the filing of consolidated tax returns or provide any other form of tax relief for groups of companies.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; imposed on transactions performed in EG that are not subject to the oil and gas sector withholding tax (see Section A)	
General rate	15
Reduced rate	6
Specified products	0
Social security contributions; imposed on salaries; paid by	
Employer	21.5
Employee	4.5
Work Protection Fund and Professional Training Fund; imposed on salaries	
General rates; paid by	
Employer (on gross salary)	1
Employee (on net salary)	0.5
Special rates for expatriate employees performing activities for oil and gas subcontractors; paid by	
Employer (on gross salary)	0.3
Employee (on gross salary)	0.1

#### E. Foreign-Exchange Controls

The EG currency is the franc CFA (FCFA).

Exchange-control regulations exist in EG for financial transfers in the franc zone which is the monetary zone including France and its former overseas colonies. In the franc zone, transactions from FCFA 1 million to FCFA 10 million require a preliminary declaration to the Ministry of Finance. Outside the franc zone, a preliminary authorization from the Ministry of the Economy, Finance and Industry is required for any transaction exceeding FCFA 10 million.

#### F. Tax Treaties

Equatorial Guinea has entered into the Central African Economic and Customs Union (UDEAC) tax treaty.

## ESTONIA

(Country Code 372)

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*The tax law in Estonia has been frequently amended, and further changes are likely to be introduced. Because of these frequent changes and the rapidly changing economic and political situation in Estonia, readers should obtain updated information before engaging in transactions.*

## **A. At a Glance**

Corporate Tax Rate (%)	21 (a)
Capital Gains Tax Rate (%)	0/21 (b)
Branch Tax Rate (%)	21 (a)
Withholding Tax (%) (c)	
Dividends	0/21 (d)
Interest	0/21 (e)
Royalties	15/21 (f)
Rental Payments	21 (f)
Services	15/21 (g)
Salaries and Wages	21

- (a) Resident companies and permanent establishments of nonresident companies registered with the Estonian authorities are not subject to tax on their income. They are subject only to tax at a rate of 21% on certain payments made by them. For details, see Section B.
- (b) Resident companies and permanent establishments of nonresident companies registered with the Estonian authorities are not subject to tax on their capital gains. Nonresident companies without a permanent establishment in Estonia are subject to tax at a rate of 21% on their capital gains derived from Estonian sources. For further details, see Section B.
- (c) These are final withholding taxes.
- (d) Withholding tax at a rate of 21% is imposed on dividends paid to nonresident companies owning less than 15% of the capital of the payer and nonresidents from low-tax jurisdictions. Other dividends are exempt from withholding tax.
- (e) Withholding tax at a rate of 21% is imposed on interest paid to resident individuals and to the portion of interest paid to nonresident individuals and nonresident companies that exceeds the market interest rate. All other interest payments are exempt from withholding tax.
- (f) Withholding tax at a rate of 15% is imposed on payments to nonresident individuals and companies. However, under the European Union (EU) directive on interest and royalties, no tax is withheld from royalties if the beneficial owner of the payment is an associated company or permanent establishment in another EU member state or Switzerland. A 21% withholding tax is imposed on payments to resident individuals.
- (g) The 21% rate applies to payments to nonresidents from low-tax jurisdictions (a low-tax jurisdiction is a jurisdiction with a tax rate of less than  $\frac{1}{3}$  of the Estonian tax rate). The 15% rate applies to payments to other nonresidents for services rendered in Estonia.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies and permanent establishments of nonresident companies registered with the Estonian authorities are not subject to tax on their income. They are subject only to tax on the following payments made to resident legal entities, nonresident companies, resident individuals and nonresident individuals: dividends; fringe benefits; gifts; distributions of profits; and payments not related to the business of the payer. Resident companies are companies registered (effectively the same as incorporated) in Estonia. European public limited-liability companies and European Cooperative Societies that have their registered office in Estonia are deemed to be Estonian tax residents. Nonresident companies without a registered permanent establishment in Estonia are subject to tax on their income derived from Estonia.

**Tax Rates.** Resident companies are subject to tax on the payments described in *Corporate Income Tax* above at a rate of 21%. To calculate the corporate income tax for 2008, the tax rate is applied to the taxable amount divided by 0.79. The tax rate will be reduced to 20% for 2009 and to 19% for 2010. The taxable amount will be divided by 0.80 in 2009 and by 0.81 in 2010.

A 21% rate applies to income derived by nonresident companies without a permanent establishment in Estonia.

**Capital Gains.** Capital gains derived by resident companies and permanent establishments of nonresident companies registered with the Estonian authorities are exempt from tax.

Nonresident companies without a permanent establishment in Estonia are taxed at a rate of 21% on their capital gains derived from Estonian sources.

Capital gains derived from sales of shares and securities are exempt from tax. However, if the shares of a company, contractual investment fund or other pool of assets are sold by a nonresident with at least a 10% holding and if at the time of the sale or at any other time during the two preceding years, real estate and buildings directly or indirectly accounted for 50% or more of the assets of the company, capital gains derived from the sale of the shares are taxable.

If a resident company is deleted from the Estonian commercial register without liquidation and its economic activities are ended, the holding of a nonresident in the company is taxed as a capital gain, which is equal to the market value of the holding less the acquisition cost. The taxation is postponed if a permanent establishment remains in Estonia.

**Administration.** The tax period is a calendar month. Tax returns must be filed and income tax must be paid by the 10th day of the following month.

*Advance Rulings.* Taxable persons may apply for advance rulings from the tax authorities. Advance rulings may relate only to actual transactions, as opposed to theoretical events. The advance ruling is binding on the tax authorities and recommended for the

taxable person. The taxable person must inform the tax authorities of the execution of the transaction described in the advance ruling. A time limit for the binding nature of the ruling is set based on the taxpayer's evaluation of the time needed for the execution of the transaction.

The processing of the advance ruling may be suspended if a similar transaction is simultaneously being reviewed in challenge proceedings (proceedings involving a dispute between the taxpayer and the tax authorities) or court proceedings and if the expected decision in such proceedings is crucial for the determination of the tax consequences. Advance rulings may not be issued with respect to transfer-pricing issues.

For the advance ruling to be binding, the taxpayer must present detailed and accurate information before the beginning of the relevant transactions. If the tax laws are amended after the advance ruling has been issued but before the transaction is carried out, the advance ruling is no longer binding. The deadline for issuing an advance ruling is 60 calendar days beginning with the date of acceptance of the application. By a motivated decision (a decision that includes arguments supporting the decision) in writing, the deadline may be extended for an additional 30 calendar days. A state fee is payable for the processing of the advance-ruling application.

A summary of the ruling, except for information protected by the tax secrecy clause (the tax authorities are bound to maintain the confidentiality of information concerning a taxpayer that was acquired in the course of their activities; certain exceptions apply), is published on the tax authorities' web page. The taxable person may prohibit the disclosure of specific information.

**Dividends.** A 21% withholding tax is imposed on dividends paid to nonresidents that hold less than 15% of the share capital of the payer and nonresidents from low-tax jurisdictions. In addition, payers of dividends must pay income tax equal to 21% of the amount of dividends paid. This income tax is treated as a payment of income tax by the distributing company rather than as tax withheld from the recipient of the dividends.

Dividends received are not included in taxable income.

**Interest.** Withholding tax at a rate of 21% is imposed on interest paid to resident individuals and to the portion of interest paid to nonresident individuals and to nonresident companies that exceeds the market interest rate. All other interest payments are exempt from withholding tax.

**Foreign Tax Relief.** If an Estonian company distributing dividends has received dividends from a foreign company (except from a company located in a low-tax jurisdiction), the dividends distributed are exempt from income tax if the dividends were received from a taxable company resident in the European Economic Area (EEA) or Switzerland or if both of the following conditions are satisfied:

- Foreign tax has been paid on or withheld from the profits out of which the dividends were paid; and

- The Estonian company receiving the dividends owned at least 15% of the shares or votes of the foreign company when the dividends were received.

### C. Determination of Trading Income

Because resident companies and permanent establishments of nonresident companies registered with the Estonian authorities are not subject to tax on their income, they need not determine their trading income for tax purposes.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on goods and services, excluding exports	5/18
Social security tax	33
Land tax	0.1 to 2.5
Unemployment insurance contributions; paid by	
Employer	0.3
Employee	0.6

Other significant taxes include excise duty, stamp duties, heavy vehicles tax, charges on the use of Estonian natural resources and pollution charges.

### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Estonian currency is the Estonian kroon (EEK).

Estonia has insignificant foreign-exchange controls. Enterprises registered in Estonia may maintain bank accounts abroad without any restrictions.

**Debt-to-Equity Rules.** No debt-to-equity or thin-capitalization rules exist in Estonia.

**Antiavoidance Legislation.** Under the Taxation Act, if it is evident from the content of a transaction or act that the transaction or act is performed for the purposes of tax evasion, the actual economic substance of the transaction applies for tax purposes. If a fictitious transaction is entered into in order to conceal another transaction, the provisions of the concealed transaction apply for tax purposes.

**Transfer Pricing.** Under a transfer-pricing measure in the income tax law, pricing between resident and nonresident associated companies should be at arm's length. The tax authorities may adjust to an arm's length amount the profit of a company engaging in transactions with nonresident associated persons. The transfer-pricing measure also covers transactions between nonresident legal entities and its permanent establishments in Estonia. Transfer-pricing documentation is required for entities with more than 250 employees (together with related parties), as well as for entities operating in certain industries or exceeding certain financial indicators.

## F. Treaty Withholding Tax Rates

The following table lists the withholding tax rates under Estonia's tax treaties. The Estonian domestic law provides lower withholding tax rates for dividends and interest under certain circumstances (see Section B).

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties (g)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Armenia	5/15 (a)	10	10
Austria	5/15 (a)	10	5/10 (d)
Belarus	10	10	10
Belgium	5/15 (a)	10	5/10 (d)
Canada	5/15 (a)	10	10
China	5/10 (a)	10	10
Croatia	5/15 (b)	10	10
Czech Republic	5/15 (a)	10	10
Denmark	5/15 (a)	10	5/10 (d)
Finland	5/15 (a)	10	5/10 (d)
France	5/15 (b)	10	5/10 (d)
Germany	5/15 (a)	10	5/10 (d)
Hungary	5/15 (a)	10	5/10 (d)
Iceland	5/15 (a)	10	5/10 (d)
Ireland	5/15 (a)	10	5/10 (d)
Italy	5/15 (b)	10	5/10 (d)
Kazakhstan	5/15 (a)	10	15
Latvia	5/15 (a)	10	5/10 (d)
Lithuania	5/15 (c)	10	10
Luxembourg	5/15 (c)	10	5/10 (d)
Malta	5/15 (a)	10	10
Moldova	10	10	10
Netherlands	5/15 (a)	10	5/10 (d)
Norway	5/15 (a)	10	5/10 (d)
Poland	5/15 (a)	10	10
Portugal	10	10	10
Romania	10	10	10
Slovak Republic	10	10	10
Slovenia	5/15 (a)	10	10
Spain	5/15 (a)	10	5/10
Sweden	5/15 (a)	10	5/10 (d)
Switzerland	5/15 (c)	10	5/10
Turkey	10	10	5/10 (d)
Ukraine	5/15 (a)	10	10
United Kingdom	5/15 (a)	10	5/10 (d)
United States	5/15 (b)	10	5/10 (d)
Nontreaty countries	0/21 (e)	0/21 (e)	15/21 (f)

- (a) The lower rate applies to dividends paid to corporations owning at least 25% of the payer. The higher rate applies to other dividends.
- (b) The lower rate applies to dividends paid to corporations owning at least 10% of the payer.
- (c) The lower rate applies to dividends paid to corporations owning at least 20% of the payer.
- (d) The lower rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
- (e) See Section B.
- (f) The 21% rate applies to rental payments. The 15% rate applies to royalties, including royalties paid for the use of industrial, commercial or scientific equipment.
- (g) Royalties paid to a company resident in another European Union (EU) country or Switzerland are not subject to withholding tax if the provisions of the EU Interest/Royalty Directive are satisfied.

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## A. At a Glance

Business Income Tax Rate (%)	30/35 (a)
Capital Gains Tax Rate (%)	15/30 (b)
Branch Tax Rate (%)	30/35 (a)
Withholding Tax (%)	
Dividends	10 (c)
Interest	5 (c)
Royalties	5 (c)
Technical Services	10 (c)(d)
Branch Remittance Tax	10 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (f)

- (a) The standard business income tax rate is 30%. Income from mining operations, excluding petroleum, natural gas and oil shale, is taxed at a rate of 35%. Income from petroleum, natural gas and oil shale operations is taxed at the standard rate of 30%.
- (b) The 15% rate applies to gains derived from transfers of buildings located in municipal areas that are used for a business. The 30% rate applies to gains derived from transfers of shares of companies.
- (c) This is a final income tax that is withheld at source for both residents and nonresidents.
- (d) This income tax, which is withheld at source, applies to technical services rendered outside Ethiopia.
- (e) Remittances by branches to their foreign headquarters are considered to be distributions of dividends and are accordingly subject to income tax at a rate of 10%.
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Business Income Tax.** Resident companies are subject to business income tax on their worldwide income. Nonresident companies are subject to tax on their Ethiopian-source income only. A company is resident in Ethiopia if it satisfies any of the following conditions:

- It has its principal office in Ethiopia.
- Its place of effective management is located in Ethiopia.



- It is registered in the trade register of the Ministry of Trade and Industry or of the trade bureaus of the regional governments of Ethiopia. Registered companies include permanent establishments of nonresident companies in Ethiopia.

**Tax Rates.** The standard rate of business income tax is 30%. Income from mining operations, excluding petroleum, natural gas and oil shale, is taxed at a rate of 35%. Income from petroleum, natural gas and oil shale operations is taxed at the standard rate of 30%.

Certain investment activities approved by the Ethiopian Investment Authority qualify for income tax exemptions and other incentives. For example, new export-oriented investments in manufacturing, agroindustrial activities or the production of agricultural products may qualify for income tax exemptions ranging from five to seven years, while two-year tax exemptions are available for investments in the expansion and upgrading of existing businesses engaged in such activities. Enterprises that incur losses during the period of income tax exemption may carry forward their losses to years following the expiration of the tax-exemption period for a period equaling half the tax-exemption period. The normal loss carry-forward period is three years (see Section C).

**Capital Gains.** Capital gains derived from transfers of buildings located in municipal areas that are used for a business, factory or office are subject to tax at a rate of 15%. Capital gains derived from transfers of shares of companies are subject to tax at a rate of 30%.

Subject to certain limitations, losses incurred on transfers of the properties described above may be used to offset gains. Unused capital losses may be carried forward indefinitely.

Subject to limitations, gains or losses are recognized on transfers of assets used in a business (other than buildings) and are subject to business income tax.

**Administration.** The Ethiopian Federal Inland Revenue Authority administers and collects the business income tax and capital gains tax of limited companies. The Ministry of Mines and Energy collects mining taxes.

The tax year (year of assessment) is the Ethiopian budgetary year, which runs from 7 July to 6 July of the following calendar year. If a company's accounting year differs from the Ethiopian budgetary year, its basis period for the tax year is the accounting year ending within the tax year.

Advance income tax of 2% is withheld from payments for goods or services if the payments exceed certain thresholds. The tax is withheld from payments for goods if the payments amount to more than Birr 10,000 in a single transaction or supply contract. For payments for services, the tax is withheld if the payments amount to more than Birr 500 in a single transaction or supply contract.

Companies must file annual tax returns, together with their annual accounts, within four months after the end of their accounting year. Companies must pay the tax shown in the tax return reduced

by the amount of the advance payments withheld and any foreign tax credits. The tax office audits the company's return and annual accounts to determine the final assessment.

Companies that fail to pay tax by the due date must pay interest at a rate that is 25% above the highest commercial lending interest rate that prevailed during the preceding quarter.

**Dividends.** A 10% final income tax that is withheld at source is imposed on dividends paid by share companies and withdrawals of profits from private limited companies. The tax applies to both residents and nonresidents. If shareholders decide to reinvest their dividends to expand the activities of the company, the dividends are exempt from tax.

Remittances by branches to their foreign headquarters are considered to be distributions of dividends and are accordingly subject to income tax at a rate of 10%.

**Other Income Withholding Taxes.** A 5% final income tax that is withheld at source is imposed on interest on deposits paid to residents and nonresidents.

A 5% final income tax that is withheld at source is imposed on royalties. Residents receiving royalties from abroad pay the 5% tax on the royalties.

A 10% income tax that is withheld at source is imposed on payments for technical services rendered outside Ethiopia to residents of Ethiopia.

**Foreign Tax Relief.** Foreign tax paid may be used as a credit against tax payable with respect to the foreign-source income, limited to the amount of tax in Ethiopia that would otherwise be payable on such income.

### C. Determination of Trading Income

**General.** Taxable income is the amount of income subject to tax after the deduction of all expenses and other deductible items allowed under the tax law.

Expenses are deductible to the extent they are incurred for the purpose of earning, securing, and maintaining business income, if it can be proved that the expenses are genuine.

Subject to restrictions, reinvestments by resident companies of their profit to increase the capital of another company may be deducted for tax purposes.

**Foreign-Exchange Gains and Losses.** All net gains or losses arising from transactions in foreign exchange are considered to be taxable income or deductible losses in the year in which they arise.

**Provisions.** Specifically identifiable provisions for bad debts are allowed if the company has taken all reasonably necessary steps to recover the debts. General provisions and provisions for stock obsolescence are not allowed.

Financial institutions may deduct special (technical) reserves in accordance with the National Bank of Ethiopia directives. However, the taxable income of banks is increased by amounts withdrawn from such reserves.

**Tax Depreciation.** Buildings and other structures are depreciated using the straight-line method at an annual rate of 5%. A straight-line depreciation rate of 10% applies to intangible assets.

The following assets are depreciated using a pooling system.

<b>Assets</b>	<b>Rate (%)</b>
Computers, information systems, software products and data storage equipment	25
Fixed assets of companies engaged in mining activities	25
Other business assets	20

Under the pooling system, the depreciation rate is applied to the depreciation base, which is the book value of the category as recorded in the opening balance sheet of the tax year, increased by certain costs incurred during the tax year, and decreased by certain amounts received during the tax year. The tax base is increased by the following costs: the cost of assets acquired or created; the cost of improvements that are capitalized; and the costs of renewal and reconstruction of assets. The tax base is decreased by the sales price of assets disposed of and compensation received for the loss of assets.

A negative depreciation base is added to taxable income. If the depreciation base is Birr 1,000 or less, the entire depreciation base is deductible.

No depreciation is allowed on the revaluation of business assets.

Maintenance and improvement expenses exceeding 20% of the depreciation base of a category of business assets increase the depreciation base of that category.

Fine arts, antiques, jewelry, trading stock and other business assets not subject to wear and tear and obsolescence may not be depreciated.

**Relief for Losses.** Companies may carry forward net operating losses for three years. However, if a company incurs losses in any of the three years following the year of the loss, the loss carry-forward period may be extended a year for each loss year in the three-year period, up to a maximum loss carryforward period of six years. Earlier losses must be set off first. Losses may not be carried back.

**Group of Companies.** The Ethiopian tax law does not allow the filing of consolidated returns.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT); levied on all supplies of goods and services made in Ethiopia and on imports, except for exempt items	
Standard rate	15
Certain items, including exports	0
Equalization turnover tax; imposed on persons not registered for VAT	
Goods sold locally	2

<b>Nature of Tax</b>	<b>Rate (%)</b>
Services rendered locally by contractors and grain mills, and on rentals of tractors and combine-harvesters	2
Other services	10
Excise tax; levied on specified goods manufactured in Ethiopia and imports; for locally produced goods, tax is imposed when production is completed and is based on production cost; for imports, tax is imposed on Cost, Insurance, and Freight (CIF) value; rates vary among products; low rate applies to textile and garment products, and high rate applies to various items, including vehicles with engines exceeding 1,800 cc	10 to 100
Revenue stamp duties; levied on transfers of certain property, including vehicles	2

### **E. Tax Treaties**

Ethiopia has entered into double tax treaties with various countries, including Italy, Kuwait, Romania, the Russian Federation, South Africa and Turkey. Ethiopia has signed double tax treaties that have not yet been ratified with Algeria, Iran, Israel and Oman.

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#### **Business Tax Advisory**

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### **A. At a Glance**

Corporate Income Tax Rate (%)	31
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	31
Withholding Tax (%)	
Dividends	15 (b)
Interest	10
Royalties from Patents, Know-how, etc.	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	8 (c)

- (a) Applies only to profits from the sale of certain undeveloped land.
- (b) The dividend withholding tax applies only to dividends that are paid out of profits that are not subject to tax.
- (c) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to income tax on worldwide assessable income. Nonresident companies carrying on business through a branch pay tax only on Fiji-source income. A resident company is a company incorporated in Fiji. A company not incorporated in Fiji is considered a resident company if it carries on business in Fiji and has either its central management and control in Fiji or its voting power controlled by shareholders who are residents of Fiji.

**Tax Rates.** Resident companies and branches of nonresident companies are subject to tax at a rate of 31%.

Tax holidays of 10 or 20 years are available to qualifying hotel projects.

**Capital Gains.** In general, capital gains are not taxed. However, under special legislation, profits derived from the sale of certain undeveloped land are taxed at a maximum rate of 30%.

**Administration.** The Fiji tax year is the calendar year. For most companies, however, an alternative fiscal year is normally permitted. Tax for any fiscal year is payable in three installments according to the following schedule:

- 33.3% of the estimated liability for the year by the last day of the fiscal year;
- 33.3% no later than three months after the year-end; and
- 33.3% no later than seven months after the year-end or, if the assessment is received earlier following the filing of the tax return, the balance on assessment.

Companies are required to file tax returns within three months after the fiscal year-end, but extensions of an additional three, six or eight months are possible, depending on the level of taxable income.

**Dividends.** Dividends received by a resident company from another resident company are not taxable.

**Foreign Tax Relief.** Income derived by Fiji residents from treaty countries is subject to Fiji income tax, but credit is given for taxes paid, up to the amount of Fiji tax applicable on the same income.

Income derived from nontreaty countries is exempt to the extent that it was subject to income tax in such countries.

## C. Determination of Trading Income

**General.** Income is defined as the aggregate of all sources of income, including annual net profit from a trade, commercial, financial or other business.

Expenses are deductible to the extent incurred in producing taxable income. Expenditures of a personal or capital nature are generally not deductible. Deductions are allowable for certain capital expenditures incurred in the agricultural and mining industries.

Experimentation and research and development expenses incurred in projects connected with the taxpayer's business are deductible.

**Inventories.** There are no specific provisions for stock valuation for the purposes of year-end income determination. Valuations are generally made at cost or market value on a first-in, first-out (FIFO) or actual basis. The tax authorities have discretion to make adjustments if inventories are sold or otherwise disposed of at below market value.

**Provisions.** Provisions are not deductible until payments are made or, in the case of doubtful trading debts, until the debts are considered totally irrecoverable and have been written off.

**Tax Depreciation.** Depreciation of fixed assets acquired before 31 December 1997 that are used in the production of taxable income is calculated using the straight-line method. The following are some of the annual rates of depreciation prescribed by law.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings	1.25 to 5
Office equipment	7
Heavy commercial motor vehicles	15
Passenger motor vehicles	10
Plant and machinery	7

An initial allowance of 30% is granted for plant, furniture, equipment and heavy commercial motor vehicles, and a 10% initial allowance is granted for buildings in the year the expenditure is incurred. The 30% initial allowance (but not the 10% initial allowance) reduces the base for computing normal depreciation in future years.

The annual allowance is granted beginning in the year the fixed asset is first used to generate income, but it is reduced by 50% for such year if the asset is first used in the second half of that year. The initial allowance, however, is available in the year the expenditure is incurred, regardless of whether the asset is used to generate income.

For assets, other than buildings, acquired on or after 1 January 1998, the initial allowance is eliminated, and the annual allowance is calculated by reference to an asset's effective life as determined by the authorities. The following are some of the minimum and maximum allowable annual depreciation rates and the corresponding effective lives to which they relate.

<b>Effective Life Years</b>	<b>Minimum Depreciation Rate (%)</b>	<b>Maximum Depreciation Rate (%)</b>	<b>Assets in Category</b>
Less than 2	100	100	Computer software
2 to less than 3	50	60	Dies
3 to less than 5	33 $\frac{1}{3}$	40	Computers
5 to less than 6 $\frac{2}{3}$	20	24	Gaming machines
6 $\frac{2}{3}$ to less than 10	15	18	Office machines
10 to less than 20	10	12	Furniture and fittings
20 to less than 40	5	6	Storage tanks
40 and above	2 $\frac{1}{2}$	3	Artworks

A company may adopt a depreciation rate lower than the maximum rate, but the rate may not be changed for the duration of the asset's life.

For buildings erected on or after 1 January 1998 and before 1 January 2001, the depreciation rates are the same as those mentioned in the first table in this section. The depreciation rates for buildings erected on or after 1 January 2001 range from 2.5% to 15%. However, the initial allowance of 10% is not available for such buildings.

Tax depreciation is subject to recapture on the sale of an asset, to the extent the sales proceeds exceed the tax value after depreciation. The amount recaptured may be set off against the cost of a replacement asset; otherwise, it is taxed as ordinary income in the year of sale.

**Relief for Losses.** Losses incurred before 2001 may generally be carried forward for six years. Losses incurred in 2001 and subsequent years may generally be carried forward for eight years. Losses incurred in agricultural activities may be carried forward indefinitely. Losses are not available for carryforward if the taxpayer's business in the year relief is claimed is substantially different from its business in the year the loss was incurred.

**Groups of Companies.** In general, no group relief measures exist. The only exception is losses incurred by agricultural companies for which special concessions are granted. Such losses may be set off against the profits of the holding or associated companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; imposed on virtually all goods and services; financial services and gambling are exempt	12.5
Hotel turnover tax	3
Social security contributions to the national provident fund, paid by Employer	8 to 22
Employee (maximum rate)	8

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Most remittances abroad require approval from the Reserve Bank of Fiji. Depending on the level of the country's foreign-exchange reserve, further restrictions may be imposed on the nature, timing and amount of remittances that can be made.

**Debt-to-Equity Ratios.** Businesses owned and operated in Fiji by nonresidents are required to maintain the following debt-to-equity ratios.

Exceeding	Percentage of Nonresident Ownership		Debt-to-Equity Ratio
	Exceeding	Not Exceeding	
50	70		5:1
70	90		4:1
90	—		3:1

In addition, the prior approval of the Reserve Bank of Fiji must be obtained before any local borrowing may be made.

**Antiavoidance Legislation.** Contracts, agreements or arrangements entered into that have the effect of altering the incidence of any tax may be rendered void by the tax authorities.

## F. Treaty Withholding Tax Rates

	<b>Dividends (a)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Australia	20	10	15
Japan	15	10	15
Korea	10/15 (b)	10	10
Malaysia	15	15	15
New Zealand	15	10	15
Papua New Guinea	17	10	15
United Kingdom	15	10	15
Nontreaty countries	15	10	15

(a) Under the domestic tax law of Fiji, the dividend withholding tax applies only to dividends that are paid out of profits that are not subject to tax.

(b) The 10% rate applies if the recipient of the dividends is a company holding at least 25% of the capital of the payer. The 15% rate applies to other dividends.

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**A. At a Glance**

Corporate Income Tax Rate (%)	26
Capital Gains Tax Rate (%)	26 (a)
Branch Tax Rate (%)	26
Withholding Tax (%) (b)	
Dividends	28 (c)
Interest	0 (d)

Royalties	28 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 (f)

- (a) See Section B.
- (b) Applicable only to payments to nonresidents. The rates may be reduced by tax treaties.
- (c) No withholding tax is imposed on dividends paid to a parent company resident in another European Union (EU) country if the recipient of the dividends satisfies the following conditions: it holds directly at least 15% of the capital of the payer; and it is subject to the income tax law of its home country.
- (d) In general, interest paid to resident individuals is subject to a final withholding tax of 28% if it is paid on bonds, debentures and bank deposits. Interest paid to nonresidents is generally exempt from tax.
- (e) No withholding tax is imposed on royalties paid to nonresidents if all of the following conditions are satisfied:
- The beneficial owner of the royalties is a company resident in another EU country or a permanent establishment located in another EU country of a company resident in an EU country;
  - The recipient is subject to income tax in its home country; and
  - The company paying the royalties, or the company whose permanent establishment is deemed to be the payer, is an associated company of the company receiving the royalties, or of the company whose permanent establishment is deemed to be the recipient.
- A company is an associated company of another company if any of the following apply:
- The first company has a direct minimum holding of 25% in the capital of the second company;
  - The second company has a direct minimum holding of 25% in the capital of the first company; or
  - A third company has a direct minimum holding of 25% in both the capital of the first company and the capital of the second company.
- Royalties paid to resident individuals are normally subject to salary withholding.
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies resident in Finland are taxed on their worldwide income. Nonresident companies are taxed only on their Finnish-source income and property. Resident companies are generally those incorporated in Finland.

**Rate of Corporate Income Tax.** For 2008, corporations are subject to tax at a rate of 26%.

**Capital Gains.** Gains derived from the disposal of business assets are treated as ordinary business income. Gains derived from the disposal of plant, machinery and equipment are deducted from the remaining book value of similar assets, reducing the depreciable basis of the remaining assets.

Gains derived by corporate entities from the sale of shares are exempt from tax if all of the following conditions are satisfied:

- The shares are part of the seller's business assets;
- The seller has owned at least 10% of the shares in the company, including the shares sold, for an uninterrupted period of at least one year;
- The shares sold are shares in either a Finnish company, a company as defined in Article 2 of the EU Parent-Subsidiary Directive or a company resident in a country with which Finland has entered into a tax treaty that applies to dividends distributed by the company; and
- The shares are not shares in a real estate company.

Even if the above conditions are satisfied, a sale of shares under certain circumstances may result in the generation of taxable income. If the acquisition cost of the shares has at any time been depreciated on the grounds that the fair market value of the shares has declined, this part of the consideration received (that is, the deducted depreciation) is taxable income. The same principle applies if the shares have at any time been the subject of a transaction between related companies and if this transaction resulted in a tax-deductible loss. Under these circumstances, the consideration received for the shares is taxable up to the amount of the earlier tax-deductible loss.

A loss incurred on the sale of shares is not tax-deductible if a gain on the sale of such shares would have been exempt from tax.

The participation exemption rules concerning capital gains, which are described above, do not apply to shares owned by capital investors. For capital investors, capital gains derived from the sale of shares are taxable income and capital losses incurred on shares are tax-deductible.

**Administration.** Companies must file tax returns within four months after the end of their accounting period.

Tax is prepaid in 12 monthly installments during the accounting period. After the tax return is filed and processed by the tax authorities, a final settlement or refund is made. The taxation is finalized within 10 months after the end of the accounting period. If the final assessment exceeds the total of the prepaid installments, interest at a rate of 5.04% (for 2007) is added to the final assessment. If the prepaid taxes exceed the final assessment, a refund with interest at a rate of 1% (for 2007) is paid. Supplementary tax prepayments may also be made before the final assessment.

The tax authorities have the right to carry out tax audits within five years from the end of the assessment year. All major corporations can expect a tax audit, usually every fifth year.

If a corporation must pay additional tax as a result of an audit, a penalty of up to 30% of the adjusted amount of taxable income may be charged. Also, interest is charged on the additional tax (but not on the penalties) at a specified rate (10% for 2007 and 11.5% for 2008). Neither the penalty nor the interest is deductible when calculating taxable income.

**Dividends.** Finland applied an imputation system for the taxation of dividends, which was abolished in 2004.

Under the current rules, a dividend distribution by a Finnish company cannot result in liability for the distributing company to pay additional income taxes on the basis of the distribution alone. This applies to dividends distributed to both Finnish residents and nonresidents.

A dividend received by a Finnish corporate entity from a company resident in Finland or from a company as defined in Article 2 of the EU Parent-Subsidiary Directive is usually exempt from tax. If a dividend is received by a Finnish corporate entity from a company resident in a non-EU country that has entered into a tax treaty with Finland, 75% of the dividend is included in taxable

income. If a Finnish corporate entity receives a dividend from a company resident in a non-EU country that has not entered into a tax treaty with Finland, the dividend is usually fully taxable.

If an unlisted Finnish corporate entity receives a dividend from a listed company resident in Finland or in an EU country and if the unlisted company owns less than 10% of the shares in the distributing company, 75% of the dividend is included in taxable income. If a dividend is received by an unlisted Finnish corporate entity from a listed company that is resident in an EU country and if the recipient owns at least 10% of the shares in the distributing company, the dividend is exempt from tax. A dividend received by a listed Finnish corporate entity from a listed company resident in an EU country is usually exempt from tax.

**Foreign Tax Relief.** If there is no tax treaty in force, domestic law provides relief for foreign tax paid. The credit is granted only if the foreign tax is final and if the recipient Finnish corporation pays tax in the same year. If the Finnish company does not have any tax liability that year, no credit is granted. Under certain conditions, foreign tax credits may be carried forward one year. Foreign tax credits may not be carried back.

Under tax treaties, foreign tax is most frequently relieved by exemption or a tax credit. With developing countries, tax sparing may also be granted.

### C. Determination of Trading Income

**General.** Taxable income is very closely tied to the income in the statutory accounts. Most of the deductions must be booked in the statutory accounts to be valid for tax purposes. As stated in the tax law, the definitions of both income and expenses are general and broad and include all expenses that are incurred to maintain or create new income.

In general, all expenses incurred on an arm's length basis to produce or maintain income in the business are deductible. Fifty percent of entertainment expenses is deductible. Expenses incurred to obtain tax-free income as well as income taxes and penalties are not deductible.

**Inventories.** Inventories are valued at the lowest of cost, replacement cost or market value on a first-in, first-out (FIFO) basis. Companies may allocate fixed manufacturing overhead to the cost of inventory for accounting and tax purposes if certain conditions are met. Obsolete inventories should be provided for or discarded.

**Provisions.** Deductions of warranty reserves and provisions for doubtful debts are limited to the amount of actual expected costs.

A corporation may create a replacement reserve if it derives a capital gain on the disposal of its business premises or if it receives insurance compensation for a fixed asset because of a fire or other accident. The replacement reserve must be used to buy new depreciable assets during the next two years. This time limit can be extended on application.

If created from the profit on the sale of a previous office, a replacement reserve can only be used to buy a building or shares

that entitle the holder to the use of office space and to the maintenance of that space.

Inventory and operating reserves are no longer allowed.

**Tax Depreciation.** The Business Tax Act provides detailed rules for the depreciation of different types of assets. The depreciable base is the acquisition cost, which includes related levies, taxes and installation costs. The depreciation expense for tax purposes is not permitted to exceed the cumulative depreciation expense reported in the annual financial statements. Plant machinery, equipment and buildings are generally depreciated using the declining-balance method.

Machinery and equipment are combined into a pool for depreciation purposes. Companies may vary the annual depreciation in this pool from 0% to 25%. All machinery and equipment with a life of more than three years are classified as depreciable assets. The depreciable basis is decreased by proceeds from sales of assets in the pool. If the sales price exceeds the depreciable basis, the excess is added to taxable income. If the remaining balance of machinery and equipment is higher than the fair market value, additional depreciation may be claimed.

Equipment with a short life (up to three years), such as tools, is usually expensed. Equipment with an acquisition price of less than €850 may also be expensed, with a maximum deduction of €2,500 per year.

The maximum depreciation rates for buildings vary from 4% to 20%. The depreciation percentage depends on the use of the building. The depreciation rate for factories, warehouses, shops and similar buildings is 7%.

Accelerated depreciation is granted for investments made by small and medium-sized companies in 1998 through 2008 in new manufacturing facilities and tourist centers in developing areas. The accelerated depreciation is allowed in the year the asset is placed in service and in the following two years. The maximum rates under this law are 37.5% for machinery and equipment and 10.5% for qualifying buildings. This accelerated depreciation is also granted for investments that substantially increase the productive capacity of an old plant.

Intangible assets, such as patents and goodwill, are depreciated using the straight-line method over 10 years, unless the taxpayer demonstrates that the asset's useful life is less than 10 years.

**Relief for Losses.** Losses may be carried forward for 10 years. However, a direct or indirect change in the ownership of the company involving more than 50% of the shares results in the forfeiture of the right to set off losses against profits in future years. An indirect change occurs if more than 50% of the shares in the parent company of the loss-making company are transferred and accordingly all of the shares owned by the parent company in the loss-making company are deemed to have changed ownership. An application may be made to the tax office for a special permit for reinstating the right to use the tax losses. The tax office has extensive discretion as to whether to grant the permit.

Losses may not be carried back.

**Groups of Companies.** Corporations are taxed individually in Finland. No consolidated tax returns are applicable. A kind of group taxation is, however, introduced by allowing group contributions for limited liability companies. Group contributions are tax-deductible for the payer and included in the income of the recipient. By transfers of these contributions, income can be effectively allocated among group companies. To qualify, both companies must be resident in Finland, and there must be at least 90% ownership, direct or indirect, from the beginning of the tax year. Both companies must also have the same accounting period. The taxpayer cannot create a loss by crediting group contributions.

If the local tax authorities allow tax losses to be deducted regardless of a change in ownership, these losses may generally not be covered by group contributions. However, on application, the local tax authorities may allow such tax losses to be covered by group contributions in special circumstances.

If a corporate entity or a group of corporate entities owns at least 10% of the share capital of another company, the losses of any receivables from the other company (other than sales receivables) are not tax-deductible. With the exception of the group contributions described above, the same rule applies to all other financial assistance granted to the other company without compensation that is intended to improve the other company's financial situation.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on the sale, rental, importation or repair of goods, and on services unless specifically exempt; exempt services include financial services and insurance services	22
Transfer tax on the purchase of real estate located in Finland; calculated as a percentage of the purchase price	4
Transfer tax on the purchase of shares in Finnish companies; calculated as a percentage of the purchase price	1.6
Social security taxes, paid by the employer as a percentage of salaries; (2007 rates)	
National pension premium and health insurance premium	2.951/5.151/6.051
Employment pension premium; average rate	16.7
Group life, accident and unemployment insurance premium, on total salaries paid by the employer (average rates)	
Up to €840,940	1.93
Amount in excess of €840,940	4.13

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** In recent years, exchange controls were eliminated.

There are no restrictions on repatriating earnings, interest and royalties abroad. The commercial bank involved in the transfer must notify only the Bank of Finland for statistical purposes.

**Transfer Pricing.** Related-party transactions are accepted if they are carried out at arm's length. Corporate income can be adjusted if the transactions are not as they would have been between independent parties.

New transfer-pricing legislation took effect on 1 January 2007. Under the new rules, group companies must prepare transfer-pricing documentation if specific circumstances exist. The aim of the documentation is to prove the arm's length nature of the prices used in cross-border intercompany transactions. On request of the tax authorities, the transfer-pricing documentation for a specified fiscal year must be submitted within 60 days, but not earlier than 6 months after the end of the financial year. Additional clarifications concerning the documentation must be submitted within 90 days of a request by the tax authorities.

A tax penalty of up to €25,000 can be imposed for a failure to comply with the transfer-pricing documentation requirements, even if the pricing of the transactions was at arm's length. The adjustment of taxable income may also result in a separate tax penalty of up to 30% of the adjusted amount of income as well as penalty interest.

**Debt-to-Equity Rules.** Direct investments are generally made with a combination of equity and foreign or domestic loans. Finland does not have any specific thin capitalization legislation. The law does not provide a specific debt-to-equity ratio, and a very limited amount of case law exists. Interest determined on an arm's length basis is normally fully deductible. If interest is paid to non-tax treaty countries or if a tax treaty does not contain a specific non-discrimination clause concerning interest, the deductibility of the interest might be challenged on grounds related to thin capitalization. To ensure deductibility, an advance ruling procedure is available.

New thin-capitalization legislation is expected to take effect in the near future, but a government proposal has not yet been introduced.

**Controlled Foreign Companies.** Under Finland's controlled foreign company (CFC) legislation, Finnish shareholders are subject to tax on their respective shares of the CFC's income if they and certain related parties own at least 10% of the CFC's share capital or are entitled to at least 10% of the return on capital of the company.

A company is considered to be "controlled" if one or more Finnish tax residents directly or indirectly owns at least 50% of the share capital of the company or if one or more Finnish tax residents is entitled to at least 50% of the return on capital of the company.

To determine whether a company is a CFC, the steps described below must be followed.

It first must be determined whether the company is controlled by Finnish residents. If not, the CFC rules do not apply. Under the act, a company is controlled by Finnish residents if residents of Finland for tax purposes own more than 50% of the share capital or the voting shares of the company, or if certain other circumstances exist.

If the company is controlled by Finnish residents, the income of the company must be analyzed. The CFC rules do not apply to income derived from the following: industrial production or similar production activity; shipping; sales or marketing activity regarding the first two categories of activities; and group companies carrying on any of the activities mentioned above that are resident in the same country as the CFC.

If the company is not excluded from the CFC rules based on the nature of its income, it must be determined if the company is resident for tax purposes in a tax treaty country.

For a company not resident for tax purposes in a tax treaty country, it must be determined if the effective tax rate (the effective tax rate is computed by determining the tax on taxable income calculated according to Finnish tax rules) of the company is at least  $\frac{3}{5}$  of the Finnish corporate tax rate (currently, 26%), or 15.6%. If the effective tax rate is below 15.6%, the CFC rules apply to the company.

For a company resident for tax purposes in a tax treaty country, if the effective tax rate is below 15.6%, the theoretical tax rate in the treaty country (corporate income tax rate according to the tax law of the country) must be determined. If the theoretical tax rate is at least 75% of the corporate tax rate in Finland (26%), or 19.5%, it must be determined whether the company has taken advantage of any special tax reliefs.

Special tax reliefs are reliefs that are not available to all companies in the company's country of residence. These reliefs include reliefs for foreign companies and reliefs for all companies based on location. If the company in the treaty country has not taken advantage of special tax reliefs and if the overall tax rate in its home country is at least 19.5%, the CFC rules do not apply. Such company is not subject to the CFC rules even if the effective tax rate for the company is less than 15.6%.

If the company has taken advantage of special tax reliefs, it must be determined whether the effective tax rate for the company is at least 15.6%. If yes, the CFC rules do not apply.

**Antiavoidance Legislation.** Under a general antiavoidance provision in the law, the tax authorities may look through certain transactions.

As a result of recent European Court of Justice case law, the Finnish government is planning to propose amendments to the CFC legislation. The amended law is not likely to take effect before the beginning of 2009. A draft proposal was recently circulated. The proposal is still under review, and several changes are likely to be made before the actual government proposal is issued.



**F. Treaty Withholding Tax Rates**

	<b>Dividends (aa)</b> %	<b>Interest (w)</b> %	<b>Royalties (cc)</b> %
Argentina	10/15 (b)	15 (ff)	3/5/10/15 (gg)
Australia	5/15 (ll)	10	10
Austria	0/10 (f)	0	5
Azerbaijan	5/10 (h)	10	5/10 (z)
Barbados	5/15 (f)	5	0/5 (c)
Belgium	0/15 (b)	10	0/5 (c)
Bosnia-Herzegovina	5/15 (b)	0	10
Brazil	10	0/15	10/15/25 (d)
Bulgaria	0/10 (mn)	0	0/5 (c)
Canada	5/15 (f)	10	0/10 (e)
China	10	10	7/10 (y)
Croatia	5/15 (b)	0	10
Czech Republic	0/15 (mn)	0	0/1/5/10 (hh)
Denmark	0/15 (ee)	0	0
Egypt	10	0	25
Estonia	0/15 (mn)	10	5/10 (x)
France	0	10	0
Germany	0/15 (nn)	0	0/5 (c)
Greece	0/13 (nn)	10	0/10 (c)
Hungary	0/15 (nn)	0	0/5 (c)
Iceland	0/15 (ee)	0	0
India	15	0/10 (q)	10/15 (q)
Indonesia	10/15 (b)	10	10/15 (g)
Ireland	0	0	0
Israel	5/15 (f)	10	10
Italy	0/15 (nn)	15 (i)	0/5 (j)
Japan	10/15 (k)	10	10
Korea	10/15 (b)	10 (i)	10
Kyrgyzstan	5/15 (b)	10	5
Latvia	0/15 (nn)	10	5/10 (x)
Lithuania	0/15 (nn)	10	5/10 (x)
Luxembourg (l)	0/15 (nn)	0	0/5/28 (c)(oo)
Macedonia	0/15 (u)	10	0
Malaysia	5/15 (ee)	15 (i)	5
Malta	0/15 (nn)	0	0
Mexico	0	0/10/15	10
Morocco	15	10	10
Netherlands	0/15 (n)	0	0
New Zealand	15	10	10
Norway	0/15 (ee)	0	0
Pakistan	12/15/20 (ii)	15 (ff)	10
Philippines	15/28 (f)	15	15/25 (m)
Poland	0/15 (nn)	0	0/10 (c)
Portugal	0/15 (nn)	15	10
Romania	0/5 (nn)	0/5	2.5/5
Russian Federation	5/12 (s)	0	0
Singapore	5/10 (f)	5	5
Slovak Republic	0/15 (nn)	0	0/1/5/10
Slovenia	0/15 (nn)	5	5
South Africa	5/15 (ee)	0	0
Spain	0/15 (nn)	10	5
Sri Lanka	15	10 (i)	0/10 (c)
Sweden	0/15 (ee)	0	0
Switzerland	0/10 (a)	0	0

	<b>Dividends (aa)</b>	<b>Interest (w)</b>	<b>Royalties (cc)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Tanzania	20	15	20
Thailand	15/20/28 (o)	10/25 (p)	15
Turkey	15/20 (b)	15	10
Ukraine	5/15 (a)	0/5/10	0/5/10 (dd)
United Arab Emirates	0	0	0
United Kingdom	0 (q)	0 (q)	0 (q)
United States (mm)	5/15 (f)(r)	0	0
Uzbekistan	5/15 (f)	0/5 (jj)	0/5/10 (kk)
Vietnam	5/10/15 (bb)	10	10
Yugoslavia (v)	5/15 (b)	0	10
Zambia	5/15 (b)	15	0/5/15 (t)
Nontreaty countries	28	0	28

- (a) The lower rate applies if the recipient is a corporation owning at least 20% of the payer.
- (b) The lower rate applies if the recipient is a corporation owning at least 25% of the payer.
- (c) The rate is 0% for royalties received for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or radio broadcasting.
- (d) A 10% rate applies to royalties received for the use of or the right to use cinematographic films or tapes for television or radio broadcasting and copyrights of literary, artistic or scientific works produced by a resident of Brazil or Finland. A 25% rate applies to royalties from trademarks. For all other royalties, the rate is 15%.
- (e) Copyright royalties for the production or reproduction of any literary, dramatic, musical or artistic work (other than motion picture films) are exempt from tax.
- (f) The lower rate applies if the recipient is a company owning at least 10% of the voting power of the payer.
- (g) The rate is 10% for royalties for copyrights of literary, artistic or scientific works, including films and tapes; otherwise, the rate is 15%.
- (h) The 5% rate applies if the recipient is a corporation owning at least 25% and more than €200,000 of the capital of the payer.
- (i) Interest on certain loans is exempt from withholding.
- (j) The rate is 0% for royalties received for the use of or the right to use any copyright of literary, artistic or scientific work, excluding cinematographic films or films and tapes for television or radio broadcasting.
- (k) The 10% rate applies if the recipient has owned at least 25% of the voting rights of the payer for at least six months before the end of the payer's fiscal year. The 15% rate applies to other dividends.
- (l) 1929 holding companies are excluded from benefits under this tax treaty.
- (m) The rate is 15% for royalties paid by an enterprise registered with and engaged in preferred areas of activities, for royalties for cinematographic films or tapes for television or broadcasting, and for royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work.
- (n) The 0% rate applies if the recipient is a corporation owning at least 5% of the payer.
- (o) The 20% rate applies if the recipient of the dividends is a corporation that owns at least 25% of the payer. The 15% rate applies to dividends paid by industrial enterprises to recipients described in the preceding sentence.
- (p) The withholding rate is 10% if the recipient is a financial institution.
- (q) A higher rate applies in certain circumstances. Please consult the tax treaty.
- (r) A 0% rate applies in certain cases.
- (s) The 5% rate applies if, at the time the dividend is payable, the recipient of the dividends owns at least 30% of the share capital of the payer and has invested in the payer foreign capital in excess of US\$100,000. The 12% rate applies to other dividends.
- (t) The rate for royalties received is 0% for the use of or the right to use any copyright of literary, artistic or scientific work; 5% for the use of or the right to use any copyright of cinematographic films and tapes and films for television or radio broadcasting; and 15% for the use of or the right to use any patent, trademark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
- (u) The 0% rate applies if the recipient of the dividends owns at least 10% of the voting rights of the payer. The 15% rate applies to other dividends.

- (v) Finland is honoring the Yugoslavia treaty with respect to Bosnia-Herzegovina, Croatia, Montenegro and Serbia.
- (w) Under Finnish domestic law, interest paid to nonresidents is generally exempt from tax.
- (x) The 5% rate applies to industrial royalties; the 10% rate applies to other royalties.
- (y) The 7% rate applies to industrial, scientific and commercial royalties. The 10% rate applies to other royalties.
- (z) The rate is 10% for royalties received for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or radio broadcasting. For other royalties, the rate is 5%.
- (aa) Under an European Union (EU) directive, which has been incorporated into Finnish domestic law, no withholding tax is imposed on dividends paid by a Finnish subsidiary to a parent company located in another EU state if the recipient of the dividends satisfies the following conditions:
- It holds directly at least 15% of the capital of the payer; and
  - It is subject to the income tax law of its home country.
- (bb) The 5% rate applies if the recipient is a corporation owning at least 70% of the share capital of the payer. The 10% rate applies if the recipient is a corporation owning at least 25%, but less than 70%, of the share capital of the payer. The 15% rate applies to other dividends.
- (cc) No withholding tax is imposed on royalties paid to nonresidents if all of the following conditions are satisfied:
- The beneficial owner of the royalties is a company resident in another EU country or a permanent establishment located in another EU country of a company resident in an EU country;
  - The recipient is subject to income tax in its home country; and
  - The company paying the royalties, or the company whose permanent establishment is deemed to be the payer, is an associated company of the company receiving the royalties, or of the company whose permanent establishment is deemed to be the recipient.
- A company is an associated company of another company if any of the following apply:
- The first company has a direct minimum holding of 25% in the capital of the second company;
  - The second company has a direct minimum holding of 25% in the capital of the first company; or
  - A third company has a direct minimum holding of 25% in both the capital of the first company and the capital of the second company.
- (dd) The 0% rate applies to royalties for software programs, patents, models or drawings. The 5% rate applies to other industrial royalties. The 10% rate applies to royalties for literary, artistic or scientific works, including cinematographic films or tapes for television or radio broadcasting.
- (ee) The lower rate applies if the recipient is a corporation owning at least 10% of the payer.
- (ff) A lower rate applies in certain circumstances. Please consult the tax treaty.
- (gg) The 3% rate applies to royalties paid to a news agency. The 5% rate applies to artistic royalties. The 10% rate applies to industrial royalties. The 15% rate applies to other royalties.
- (hh) The 0% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or radio broadcasting. The 1% rate applies to amounts paid under financial leases of equipment. The 5% rate applies to amounts paid under operating leases of equipment and computer software. The 10% rate applies to other royalties.
- (ii) The 12% rate applies if the recipient of the dividends is a corporation owning at least 25% of the payer. The 15% rate applies if the recipient of the dividends is a corporation owning less than 25% of the payer. The 20% rate applies to other dividends.
- (jj) The 0% rate applies in certain circumstances. Please consult the tax treaty.
- (kk) The 0% rate applies to royalties paid for the use of, or right to use, computer software, patents, designs, models or plans. The 5% rate applies to royalties paid for the use of, or the right to use, secret formulas or processes, or for information concerning industrial, commercial or scientific experience (know-how). The 10% rate applies to royalties for the use of, or right to use, trademarks and copyrights of literary, artistic or scientific works, including cinematographic films, and films or tapes for television or radio broadcasting.
- (ll) The 5% rate applies if the recipient is a corporation owning at least 10% of the payer's voting rights. A 0% rate applies in certain cases.

- (mm) Under an amendment to the treaty, changes to the withholding tax rates entered into force on 1 February 2008. These changes are reflected in the above table.
- (nn) The lower rate applies if the recipient is a corporation owning at least 15% of the payer.
- (oo) The 28% rate applies if the recipient is a special holding company.

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Corporate Income Tax Rate (%)	33 $\frac{1}{3}$ (a)
Capital Gains Tax Rate (%)	0/15/33 $\frac{1}{3}$ (a)(b)
Branch Tax Rate (%)	33 $\frac{1}{3}$ (a)
Withholding Tax (%)	
Dividends	25 (c)(d)
Interest	18 (c)(e)(f)
Royalties from Patents, Know-how, etc.	33 $\frac{1}{3}$ (c)(e)
Branch Remittance Tax	25 (g)
Net Operating Losses (Years)	
Carryback	3
Carryforward	Unlimited

(a) For resident companies, surtaxes are imposed on the corporate income tax and capital gains tax. For details, see Section B.

(b) For details concerning these rates, see Section B.

- (c) These are the withholding tax rates under French domestic law. Tax treaties may reduce or eliminate the withholding taxes.
- (d) Under the European Union (EU) Parent-Subsidiary Directive, dividends distributed by a French subsidiary to an EU parent company are exempt from withholding tax, if, among other conditions, the recipient holds or commits to hold 15% or more of the shares of the subsidiary for at least two years. The 15% threshold applies to distributions occurring on or after 1 January 2007. The threshold will be reduced to 10% for distributions occurring on or after 1 January 2009.
- (e) No withholding tax is imposed on interest and royalties paid between associated companies of different EU member states if certain conditions are met. For details, see Section B.
- (f) Interest on qualified borrowings is exempt from domestic withholding tax under Section 131 *quater* of the French Tax Code (see Section B).
- (g) Branch remittance tax may be reduced or eliminated by double tax treaties. It is not imposed on French branches of companies that are resident in EU member states and are subject to tax in their home countries.

## B. Taxes on Corporate Income and Gains

**Corporate Tax.** The taxation of French companies is based on a territorial principle. As a result, French companies carrying on a trade or business outside France are generally not taxed in France on the related profits. However, under the French controlled foreign company (CFC) rules contained in Article 209 B of the French Tax Code, income earned by a French enterprise through a foreign enterprise may be taxed in France if such income is subject to an effective tax rate that is 50% lower than the French effective tax rate on similar income (for further details, see Section E). French companies are those registered in France, regardless of the nationality of the shareholders or where the companies are managed and controlled. Foreign companies carrying on an activity in France are subject to French corporate tax on their French-source profits.

Profits derived in France by branches of nonresident companies are deemed to be distributed, normally resulting in the imposition of a branch withholding tax of 25% on after-tax income. Branch withholding tax is not imposed on the profits of French branches of companies that are resident in EU member states and that are subject to corporate income tax in their home countries. Branch withholding tax may be reduced or eliminated by tax treaties. Although branch withholding tax normally applies to undistributed profits, such profits may be exempted from the tax if an application is filed with the tax authorities and if certain requirements are met.

**Rates of Corporate Tax.** The standard corporate tax rate is 33 $\frac{1}{3}$ %.

A social security surtax of 3.3% is assessed on the corporate tax. This surtax is imposed on the portion of corporate tax due exceeding €763,000 before offsetting the tax credits granted under tax treaties (see *Foreign Tax Relief* below). The 3.3% surtax does not apply to a company that meets both of the following conditions:

- Its annual turnover is less than €7,630,000; and
- At least 75% of the company is owned by individuals or by companies that themselves satisfy this condition and the above condition.

Members of consolidated groups must take into account the global turnover of the group in determining whether they reach the €7,630,000 threshold mentioned above.



For the 2007 financial year, taking into account the social security surtax, the effective rate of French corporate income tax is 34.43% (33.33% + 1.1%).

A reduced corporate tax rate of 15% applies to €38,120 of a company's profits if certain conditions are met, including the following:

- The turnover of the company exclusive of tax is less than €7,630,000; and
- At least 75% of the company is owned by individuals or by companies that themselves satisfy this condition and the above condition.

In addition, legal entities subject to corporate income tax are also liable for a minimum tax, unless their turnover increased by their financial income is less than €400,000 or unless certain exemptions apply. The minimum tax is based on the turnover of the company, excluding value-added tax (VAT), effective from 2006. For 2007, the minimum tax is calculated using the following schedule.

Turnover Exclusive of VAT		Minimum Corporate Income Tax €
Exceeding € (Thousands)	Not Exceeding € (Thousands)	
0	400	0
400	750	1,300
750	1,500	2,000
1,500	7,500	3,750
7,500	15,000	16,250
15,000	75,000	20,500
75,000	500,000	32,750
500,000	—	110,000

Effective from 2006, the minimum tax due is deductible from a company's taxable income.

**Capital Gains.** Capital gains derived from the sale of assets by French companies are subject to corporate income tax at the standard rate of 33.33% (34.43% including the 3.3% social surtax).

Short-term capital gains are included in the ordinary income and subject to the standard corporate tax rate. Short-term losses may offset ordinary income.

Capital gains on the sale of qualifying participations recognized during financial years beginning on or after 1 January 2007 are exempt from tax. Qualifying participations must satisfy both of the following conditions:

- They are considered *titres de participation* (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest) or they are eligible for the dividend participation exemption regime; and
- They must have been held for at least two years before their sale.

However, 5% of the net capital gains realized on qualifying participations during a fiscal year is added back to profits taxable at the standard rate of corporate income tax.

Capital gains on the sale of qualifying participations recognized during the financial years beginning during the period of 1 January 2006 through 31 December 2006 were subject to tax at a rate of 8%.

Effective for financial years beginning on or after 1 January 2007, long-term capital losses incurred with respect to such participating interests may no longer be offset against long-term capital gains. Long-term capital losses existing as of the closing date of the tax year preceding the first tax year beginning on or after 1 January 2007 are forfeited.

A reduced 15% tax rate applies to the following:

- Capital gains derived from sales of shares in venture mutual funds (FCPRs) and venture capital investment companies (SCRs), if these shares have been held for a period of at least five years.
- Income derived from the licensing of patents or patentable rights.
- Capital gains realized on or after 27 September 2007 on patents or patentable rights held for at least two years, unless the disposal takes place between related companies.

Effective for financial years beginning on or after 1 January 2007, long-term capital losses relating to interests qualifying for the 15% category may only be offset against long-term capital gains corresponding to the same category.

The reduced rates of 8% (0% from 2007) and 15% also apply to various distributions made by venture mutual funds (FCPRs) and venture capital investment companies (SCRs).

Capital gains derived from sales of participating interests in companies that are predominantly real-estate companies are subject to tax at the standard rate of 33.33%, effective from 2008.

**Administration.** In general, companies must file a tax return within three months following the end of their financial year.

Corporate income tax is prepaid in four installments. Companies with a year-end of 31 December must pay the installments on 15 March, 15 June, 15 September and 15 December. The balance of corporate tax is due by 15 April of the following year. Other companies must pay the balance of corporate tax due within 4 months following the end of their financial year. The rules governing the payment of corporate income tax also apply to the payment of the 3.3% surtax.

Companies that generated a turnover exceeding €15 million [excluding value-added tax (VAT)] in the preceding year must file their corporate income tax and VAT returns electronically. If a company does not comply with this requirement, a 0.2% penalty is imposed. Other companies may elect to file such returns electronically.

In general, late payment and late filing are subject to a 10% penalty. If additional tax is payable as a result of a reassessment of tax, interest is charged at 0.4% per month (that is, 4.8% per year). Many exceptions and specific rules apply to interest and penalties.

**Dividends.** Dividends paid by French companies no longer carry a tax credit (*avoir fiscal*). However, under the parent-subsidiary regime, dividends received by French companies or French branches of nonresident companies are exempt from corporate income tax, except for a 5% service charge (normally capped to the total

amount of expenses effectively incurred during the fiscal year), which is computed on the gross dividend income (net dividend income and foreign tax credits) and added back to the recipient's taxable income.

The parent-subsidiary regime applies if the recipient holds 5% or more of the share capital of the distributing company.

In general, a 25% withholding tax is imposed on dividends paid to nonresidents. This withholding tax may be reduced or eliminated by tax treaties. In addition, under the EU Parent-Subsidiary Directive, dividends distributed by French subsidiaries to EU parent companies are exempt from withholding tax, if, among other conditions, the recipient holds 15% or more of the shares of the subsidiary for at least two years. The 15% threshold is effective from 1 January 2007, and will be reduced to 10%, effective from 1 January 2009.

**Withholding Taxes on Interest and Royalties.** Under French domestic law, effective from 1 January 2008, an 18% withholding tax is imposed on interest paid to nonresidents. In addition, a 33 $\frac{1}{3}$ % withholding tax is imposed on royalties and certain fees paid to nonresidents. However, as a result of the implementation of EU Directive 2003/49/EC, withholding tax on interest and qualifying royalties paid between "associated companies" of different EU member states is abolished, effective from 1 January 2004. A company is an "associated company" of a second company if any of the following conditions are satisfied:

- The first company has maintained a direct minimum holding of 25% in the capital of the second company for at least two years at the time of the payment or commits itself to maintain such holding for a two-year period;
- The second company has maintained a direct minimum holding of 25% in the capital of the first company for at least two years or commits itself to maintain the holding for the two-year period; or
- A third company has maintained a direct minimum holding of 25% both in the capital of the first company and in the capital of the second company for at least two years or commits itself to maintain such holding for a two-year period.

Domestic withholding taxes on interest and royalties may be reduced or eliminated by tax treaties.

In addition, under Section 131 *quater* of the French Tax Code, a domestic withholding tax exemption is available for interest on qualifying borrowings (for example, a financing arrangement that is contracted abroad before the funds are effectively transferred to the borrower). This domestic exemption may apply regardless of the tax residence of the lender. In practice, this exemption mechanism is widely used.

**Foreign Tax Relief.** In general, French domestic law does not allow a foreign tax credit; income subject to foreign tax and not exempt from French tax under the territoriality principle is taxable net of the foreign tax paid. However, most tax treaties provide for a tax credit that generally corresponds to withholding taxes on passive income.

### C. Determination of Trading Income

**General.** The assessment is based on financial statements prepared according to generally accepted accounting principles, subject to certain adjustments.

**Deductibility of Interest.** In general, interest payments are fully deductible. However, certain restrictions are imposed.

Interest accrued by a French entity with respect to loans from its direct shareholders may be deducted from the borrower's taxable income only if the following two conditions are satisfied:

- The share capital of the borrower is fully paid-up; and
- The interest rate does not exceed the average interest rate on loans with an initial duration of more than two years granted by banks to French companies.

The above restriction also applies to interest paid outside France by international treasury pools established in France.

New thin-capitalization rules apply to financial years beginning on or after 1 January 2007. Related-party interest falling within the scope of the new measures is tax-deductible only to the extent that it meets two tests, which are applicable on a stand-alone basis at the level of each borrowing company, as opposed to a consolidated basis. These tests are the Arm's Length Test and the Thin-Capitalization Test.

Under the Arm's Length Test, the interest rate is capped to the higher of the following two rates:

- The average annual interest rate on loans granted by financial institutions that carry a floating rate and that have a minimum term of two years; and
- The interest rate at which the company could have borrowed from any unrelated financial institution (for example, a bank) in similar circumstances.

The portion of interest that exceeds the higher of the above two thresholds is not tax-deductible and must be added back to the company's taxable income for the relevant financial year.

The Thin-Capitalization Test may limit the deductibility of interest even if the amount of interest expense complies with the Arm's Length Test described above. Under the Thin-Capitalization Test, the interest paid in excess of the following three thresholds is not tax-deductible:

- The debt-to-equity ratio threshold, which is calculated in accordance with the following formula:

$$\frac{\text{The amount of interest that meets the Arm's Length Test} \times 150\% \text{ of the net equity of the borrower at either the beginning or end of the financial year}}{\text{The total indebtedness of the French borrowing company resulting from borrowing from related companies}}$$

The total indebtedness of the French borrowing company  
resulting from borrowing from related companies

Under French accounting rules, equity includes share capital, paid-in capital (for example, merger premiums and share premiums), revaluation of assets above historical cost, reserves (legal reserves, statutory or contractual reserves, and other reserves), retained earnings, subsidies for long-term investments, regulated provisions and the net income or loss for the period.

- The earnings threshold, which equals 25% of the adjusted current income. The adjusted current income is the operating profit before deducting the following items: tax; related-party interest; depreciation and amortization; and certain specific lease rents.
- The interest income threshold, which equals interest received by the French company from related companies.

If the interest that is considered to be tax-deductible under the Arm's Length Test exceeds all three of the above thresholds, the portion of the interest that exceeds the highest of the above thresholds is not tax-deductible unless the excess amount of interest is lower than €150,000.

The nondeductible portion of interest is added back to the taxable income of the borrowing entity. However, it can be carried forward for deduction in subsequent financial years. A 5% reduction applies each year to the balance of the interest carried forward to future financial years beginning with the second subsequent financial year.

The above thresholds that limit the deductibility of interest do not apply if the French borrowing company can demonstrate that the consolidated debt-to-equity ratio of its group is higher than the debt-to-equity ratio of the French borrowing company on a stand-alone basis (based on its statutory accounts). In determining the consolidated debt-to-equity ratio of the group, French and non-French affiliated companies and consolidated net equity and consolidated group indebtedness (excluding intercompany debt) must be taken into account.

In the context of a tax consolidated group, excess interest that is not tax-deductible under the Thin-Capitalization Test cannot be carried forward by the company that has incurred the excess interest. The excess interest that exceeds the three cumulative thresholds is surrendered to the head of the tax group which may carry forward the excess interest. In addition, in calculating the taxable income of the group, the aggregate amount of nondeductible interest as determined at the level of each group member may be offset against the group's taxable profits up to a specific ratio calculated by referring to the consolidated earnings of the tax group members.

**Inventories.** Inventory is normally valued at the lower of cost or market value. Cost must be determined under a weighted-average cost price method. A first-in, first-out (FIFO) basis is also generally acceptable, but a last-in, first-out (LIFO) basis is not permitted.

**Reserves.** In determining accounting profit, companies must book certain reserves, such as reserves for a decrease in the value of assets, risk of loss or expenses. These reserves are normally deductible for tax purposes. In addition, the law provides for the deduction of special reserves, including reserves for foreign investments and price increases.

**Capital Allowances.** In general, assets are depreciated using the straight-line method. However, qualifying industrial assets are generally depreciated using the declining-balance method.

Effective from 1 January 2005, from an accounting standpoint, if depreciable assets are composed of various parts with different characteristics, each component must be depreciated on a separate basis (these assets must split into a principal component or structure on one hand and additional components on the other hand). The depreciable amount of each asset must be spread out over its likely useful life for the company, which corresponds to the time period during which the company may expect to derive a profit from it. The depreciation method applied to each asset (straight-line method or accelerated method) must also be consistent with the pace at which the company expects to derive a profit from the asset.

French companies must also assess periodically whether the residual value of each component has diminished significantly and decide whether they need to establish a (non-tax deductible) provision for impairment.

For tax purposes, the depreciation of assets that have not been split into components and the depreciation of the principal components of assets that have been split into components can be spread out over the useful life commonly accepted in business practices. This rule does not apply to buildings acquired by real estate investment companies. The following are some of the acceptable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Commercial buildings	2 to 5
Industrial buildings	5
Office equipment	10 to 20
Motor vehicles	20 to 25
Plant and machinery	5 to 10*

\* These are the general rates. Alternatively, plant and machinery may be depreciated using the declining-balance method at rates generally ranging from 12.5% to 50%.

Under the above depreciation rules, for assets that have not been split and for the principal components of assets that have been split, a change in accounting methods does not have any tax effects because the depreciation rates remain unchanged from a tax standpoint. For components and certain reserves booked for heavy repairs (expenses incurred for the renewal of fixed assets must be capitalized under the new accounting rules), the change in accounting methods could affect the tax depreciation amount. The difference in the tax depreciation amount can be spread over a five-year period beginning with the 2005 financial year.

Certain specified assets may be depreciated using accelerated depreciation methods. For example, pollution-control buildings completed before 1 January 2006, as well as qualifying software, may be fully depreciated over a 12-month period. Land and works of art are not depreciable. Intangible assets are depreciable if the company can anticipate that the profits derived from the assets will end at a fixed date. In general, goodwill is not depreciable.

**Relief for Tax Losses.** Losses incurred for financial years ending after 31 December 2003 may be carried forward indefinitely.

In addition, enterprises subject to corporate tax may carry back losses against undistributed profits for the three preceding financial years. The carryback results in a credit equal to the loss multiplied by the current corporate tax rate, but limited to the amount of corporate tax paid during the preceding three years. The credit may be used to reduce corporate income tax payable during the following five years, with any balance refunded at the end of the five-year period. A significant change in the company's activity may jeopardize the loss carryover and carryback.

**Groups of Companies.** Related companies subject to corporate tax may elect to form a tax-consolidated group. Under the tax-consolidation regime, the parent company files a consolidated return and pays tax based on the net taxable income of companies included in the consolidated group. The group includes the French subsidiaries in which the parent has a shareholding of at least 95% and for which the parent company has elected the tax consolidation.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, standard rate	19.6
Business activity tax ( <i>taxe professionnelle</i> ), on annual rental value of tangible assets; rate determined locally (limited to 3.5% to 4% of the value added by the business); national average rate	23.16
Social security contributions, on gross salary (approximate percentages); paid by	
Employer	35 to 45
Employee	18 to 23
General social security tax ( <i>contribution sociale généralisée</i> , or CSG) on active income	7.5
General social security tax on patrimonial and financial income (for example, income from real estate and securities)	8.2
Social debt repayment tax ( <i>contribution remboursement de la dette sociale</i> , or CRDS), on all income	0.5
Social levy on patrimonial and financial income (including 0.3% surtax)	2.3
Registration duty	
On sales of shares in stock companies (including <i>sociétés anonymes</i> , <i>sociétés par actions simplifiées</i> and <i>sociétés en commandites par actions</i> ); maximum tax is €4,000 per sale; for shares in listed companies, tax imposed only if sale is formalized by a deed	1.1
On sales of professional premises, housing, businesses, shares of private limited liability companies ( <i>sociétés à responsabilité limitée</i> , or SARLs), interests in general partnerships ( <i>sociétés en nom collectif</i> , or SNCs) and shares of companies whose assets primarily consist of real estate	5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** French exchange-control regulations have been eased. Direct French investments into foreign countries are now almost completely unrestricted. In general, direct foreign investments into France, except in certain sensitive sectors, are subject to an administrative declaration only. For current operations, such as loans between residents and nonresidents and the opening of foreign bank accounts by French companies, the regulations have been almost totally eliminated.

**Payments to Residents of Tax Havens.** Under Article 238 A of the French Tax Code, interest, royalties or other remuneration paid to a recipient established in a tax haven or on a bank account located in a tax haven are deemed to be fictitious and not at arm's length. If the French entity cannot prove that the operation is effective (that is, it compensates services effectively rendered) and at arm's length, the amount paid is not deductible for tax purposes.

**Transfer Pricing.** French entities controlled by, or controlling, entities established outside France are taxable in France on any profits transferred directly or indirectly to the entity located abroad through an increase or decrease in purchase or sale prices or by any other means.

**Controlled Foreign Companies.** Under Section 209B of the French Tax Code, effective from the 2006 financial year, if French companies subject to corporate income tax in France have a foreign branch or hold, directly or indirectly, an interest (shareholding, voting rights or share in the profits) of at least 50% in any type of structure benefiting from a privileged tax regime in its home country (the shareholding threshold is reduced to 5% if more than 50% of the foreign entity is held by French companies acting in concert or by entities controlled by the French company), the profits of this foreign entity or enterprise are subject to corporate income tax in France. If the foreign profits have been realized by a legal entity, these profits are taxed as a deemed distribution in the hands of the French company. If the profits have been realized by an enterprise (an establishment or a branch), these profits are taxed as profits of the French company if the tax treaty between France and the relevant foreign state allows the application of Section 209B of the French Tax Code.

For the purpose of the above rules, a privileged tax regime is a regime under which the effective tax paid is 50% lower than the tax that would be paid in France in similar situations (such foreign company is known as a controlled foreign company [CFC]). Tax paid by a CFC in its home country may be credited against French corporate income tax.

CFC rules do not apply to profits derived from entities established in an EU member state unless the French tax authorities establish that the use of the foreign entity is an artificial scheme that is driven solely by French tax avoidance purposes.

Similarly, the CFC rules do not apply if the profits of the foreign entity are derived from an activity effectively performed in the country of establishment. However, this exception does not apply if either of the two following conditions exists:



- More than 20% of the profits are derived from portfolio management activities (securities, shares and outstanding debts) and intangible rights management; or
- The total profits derived from the items mentioned in the first bullet and from intercompany services represent more than 50% of the profits of the foreign entity.

In such circumstances, the French company may nevertheless establish that the principal effect of the use of the foreign entity is not the obtaining of an advantage from a privileged tax regime.

**Debt-to-Equity Rules.** For a discussion on the restrictions imposed on the deductibility of interest payments, including the thin-capitalization rules, see Section C.

**Headquarters and Logistics Centers.** The French tax authorities issue rulings that grant special tax treatment to headquarters companies and logistics centers companies. These companies are subject to corporate income tax at the normal rate on a tax base corresponding to 6% to 10% of annual operating expenses, depending on the company's size. In addition, certain employee allowances are exempt from income tax.

**Reorganizations.** On election by the companies involved, mergers, spin-offs, split-offs and dissolutions without liquidation may qualify for a special rollover regime.

**Tax Credit for Research and Development.** According to the Financial Bill project, effective from 1 January 2008 to encourage investments in research and development (R&D), the tax credit for R&D expenditure will equal 30% of all expenses related to operations of R&D up to €100 million, and 5% for such expenses above €100 million. The rate will be increased to 50% for companies that benefit from the tax credit for the first time, or did not benefit from the regime for the five years preceding their request for the credit.

## F. Treaty Withholding Tax Rates

The following table is for illustrative purposes only.

	Dividends %	Interest (h) %	Royalties (h) %
Albania	5/15	0/10	5
Algeria	5/15	0/10	5/10
Argentina	15	0/18 (i)	18
Armenia	5/15	0/10	5/10
Australia	15	0/10	10
Austria	0/15 (a)	0	0
Azerbaijan	10	0/10	5/10
Bahrain	0	0	0
Bangladesh	10/15	0/10	10
Belgium	0/15 (a)	0/15	0
Benin	25	0/18 (i)	0
Bolivia	15	0/15	15
Botswana	0/5/12	0/10	0/10
Brazil	15	0/10/15	10/15/25
Bulgaria	5/15	0	5
Burkina Faso	25	0/18 (i)	0
Cameroon	15	0/15	7.5/15

	<b>Dividends</b>	<b>Interest (h)</b>	<b>Royalties (h)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Canada (b)	5/15	0/10	0/10
Central African Republic	25	0/18 (i)	0
Chile	15	5/15	5/10
China (g)	10	0/10	10
Comores	0/15	0	0
Congo	15/20	0	15
Côte d'Ivoire	15	0/15	0/10
Croatia	0/15	0	0
Cyprus	0/10/15 (a)	0/10	0/5
Czechoslovakia (c)	0/10 (a)	0	0/5
Czech Republic	0/10 (a)	0	0/5/10
Denmark	0 (a)	0	0
Ecuador	15	0/10/15	15
Egypt	0	0/15	10/15
Estonia	0/5/15 (a)	0/10	5/10
Finland	0 (a)	0/10	0
French Polynesia	25	0	33 <sup>1</sup> / <sub>3</sub>
Gabon (f)	25	0/18 (i)	0/10
Germany	0/15 (a)	0	0
Ghana	5/15	0/10	10
Greece	0/25 (a)	0	5
Guinea	15	0/10	0/10
Hungary	0/5/15 (a)	0	0
Iceland	5/15	0	0
India	10	10	0
Indonesia	10/15	0/10/15	10
Iran	15/20	0/15	10
Ireland	0/10/15 (a)	0	0
Israel	5/15	0/10	0/10
Italy	0/5/15 (a)	0/10	0/5
Jamaica	10/15	0/10	10
Japan	5/15	0/10	10
Jordan	5/15	0/15	5/15/25
Kazakhstan	5/15	0/10	10
Korea	10/15	0/10	10
Kuwait	0	0	0
Latvia	0/5/15 (a)	0/10	5/10
Lebanon	0	0	33 <sup>1</sup> / <sub>3</sub>
Lithuania	0/5/15 (a)	0/10	5/10
Luxembourg	0/5/15/25 (a)	0/10	0
Macedonia	0/15	0	0
Madagascar	15/25	0/15	10/15
Malawi	15/25	0/10/15	0
Malaysia	5/15	0/15	10
Mali	25	0/18 (i)	0
Malta	0/5/15 (a)	0/10	10
Mauritania	25	0/18 (i)	0
Mauritius	5/15	0/18 (i)	0/15
Mayotte	25	0	0
Mexico	0/5	0/5/10/15	0/10
Monaco	0/25	0/10/18	33 <sup>1</sup> / <sub>3</sub>
Mongolia	5/15	0/10	5
Morocco	0/15	0/10/15	5/10
Namibia	5/15	0/10	10

	<b>Dividends</b> %	<b>Interest (h)</b> %	<b>Royalties (h)</b> %
Netherlands	0/5/15 (a)	0/10	0
New Caledonia	5/15	0	0/10
New Zealand	15	0/10	10
Niger	15/25	0/18 (i)	0
Nigeria	12.5/15	0/12.5	12.5
Norway	0/15	0	0
Oman	0/5	0	0
Pakistan	10/15	0/10	10
Philippines	10/15	0/10/15	15
Poland	0/5/15 (a)	0	0/10
Portugal	0/15 (a)	0/10/12	5
Qatar	0	0	0
Romania	10	0/10	10
Russian Federation	5/10/15	0	0
St. Pierre and Miquelon	5	0	0/10
Saudi Arabia	0	0	0
Senegal	15	0/15	0
Singapore	10/15	0/10	0/33 <sup>1</sup> / <sub>3</sub>
South Africa	5/15	0	0
Spain	0/15 (a)	0/10	5
Sri Lanka	25	0/10	0/10
Sweden	0/15 (a)	0	0
Switzerland	0/15	0	5
Thailand	15/20	0/3/10	5/15
Togo	25	0/18 (i)	0
Trinidad and Tobago	10/15	0/10	0/10
Tunisia	25	0/12	5/15/20
Turkey	15/20	0/15	10
Ukraine	0/5/15	0/2/10	0/10
USSR (e)	15	0/10	0
United Arab Emirates	0	0	0
United Kingdom	0/5/15 (a)	0	0
United States	5/15	0	0/5
Uzbekistan	5/10	0/5	0
Venezuela	0/5	0/5	5
Vietnam	5/15	0	10
Yugoslavia (d)	5/15	0	0
Zambia	10/25	0/10/15	0
Zimbabwe	10/15	0/10	10
Nontreaty countries	25	0/18 (i)	33 <sup>1</sup> / <sub>3</sub>

- (a) Dividends paid by French companies to parent companies located in other EU member states are exempt from withholding tax if the parent company makes a commitment to hold at least 15% (effective from 2007) of the distributing company for an uninterrupted period of at least two years. However, the Denmark and Finland treaties provide that all dividends are exempt from withholding tax.
- (b) Withholding tax rates of 5/15% (dividends), 0/10% (interest) and 0/10% (royalties) apply with respect to Quebec.
- (c) France is honoring the France-Czechoslovakia treaty with respect to the Slovak Republic. France is negotiating a tax treaty with the Slovak Republic.
- (d) France is honoring the France-Yugoslavia treaty with respect to Bosnia-Herzegovina, Montenegro, Serbia and Slovenia. France has signed a tax treaty with Slovenia (7 April 2004), which has not yet been ratified.

- (e) France has agreed with Georgia and Turkmenistan to apply the France-USSR tax treaty. France applies the France-USSR tax treaty to Belarus, Kyrgyzstan, Moldova and Tajikistan. France has entered into tax treaties with Armenia, Azerbaijan, Estonia, Kazakhstan, Latvia, Lithuania, the Russian Federation, Ukraine and Uzbekistan.
- (f) France has signed a protocol to the existing tax treaty with Gabon (20 September 1995), which has not yet been ratified. The rates listed in the table are the rates under the existing tax treaty.
- (g) The tax treaty between France and China does not apply to Hong Kong.
- (h) As a result of the implementation of EU Directive 2003/49/EC, withholding tax on interest and royalties paid between associated companies of different EU states is abolished, effective from 1 January 2004, if certain conditions are met (see Section B).
- (i) The 0% withholding tax rate applies to bonds issued on or after 1 January 1987 (before this date, a 10% or 12% tax rate applied). The 16% rate applies to nontraded debt.

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### A. At a Glance

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35 (b)
Branch Tax Rate (%)	35 (a)(c)
Withholding Tax (%)	
Dividends	20 (d)(e)
Interest	10 (f)
Royalties from Patents, Know-how, etc.	10 (d)
Payments for Services	10 (g)
Branch Remittance Tax	20 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is 1.1% of turnover (unless exempt). See Section B for details.
- (b) In certain circumstances, the tax is deferred or reduced (see Section B).
- (c) If an election is made, a 10% withholding tax is imposed on CIE Petroleum Contractors (foreign companies without a permanent establishment in Gabon that have contracted with oil companies established in Gabon). Oil companies' subcontractors with a permanent establishment in Gabon are subject to tax on taxable turnover. The tax rate for these subcontractors is currently 8.33% (see Section D).
- (d) Applicable to payments to residents and nonresidents.
- (e) This tax also applies to directors' fees, nondeductible expenses, adjustments of profits following a tax examination and interest on bonds and debentures. The rate is 22% for directors' fees. A 30% withholding tax is imposed on

“lots,” which are exceptionally high bond discounts given only for certain specified bonds selected at random. The withholding tax is imposed on the amount of the discount.

- (f) This withholding tax is imposed on interest paid on debt claims, bank deposits and guarantees to corporations that do not have their seat in Gabon or to nonresident individuals. Also, see footnote (e) for details concerning withholding tax on interest on bonds and debentures.
- (g) Applicable to payments by resident companies to nonresidents for services, including professional services, rendered or used in Gabon.
- (h) This tax applies if the profits are remitted to the head office.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Gabonese companies are taxed on the territoriality principle. As a result, Gabonese companies carrying on a trade or business outside Gabon are not taxed in Gabon on the related profits. Gabonese companies are those registered in Gabon, regardless of the nationality of the shareholders or where the companies are managed and controlled. Foreign companies with activities in Gabon are subject to Gabonese corporate tax on Gabonese-source profits.

**Tax Rates.** The corporate income tax rate is 35%. The minimum corporate tax payable is 1.1% of annual turnover, but not less than FCFA 600,000. For the purpose of calculating the minimum tax, an allowance of 25% of annual turnover for the previous year is granted for purchase activities (sales of goods not manufactured by the seller), and a 10% allowance is granted for manufacturing activities (sales of goods manufactured by the seller). Up to one-third of the minimum tax paid in a year in which a company incurs a loss may be deducted from the corporate tax payable in each of the three years following the year of the loss.

**Capital Gains.** Capital gains are taxed at the regular corporate rate. The tax, however, can be deferred if all of the proceeds are used to acquire new fixed assets in Gabon within three years or in the event of a merger.

If the business is totally or partially transferred or discontinued, only one-half of the net capital gains is taxed if the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gains is taxed if the event occurs five years or more after the business is begun or purchased.

**Administration.** The tax year is the calendar year. Tax returns must be filed by 30 April.

Companies must pay the corporate tax (or the minimum tax) in three installments, which are due on 30 November, 30 January and 30 April. The first installment is equal to 25% of the preceding year's corporate tax. The second and third installments are each equal to 33.33% of such tax. Companies must pay any balance of tax due by the due date for the tax return, which is 30 April.

Late payments are subject to a penalty of 10% and interest of 1% a month.

**Dividends.** Dividends paid are subject to a 20% withholding tax. Resident recipients must include the gross dividend in taxable income, but they receive a corresponding 20% tax credit to prevent double taxation.

A parent corporation may exclude up to 90% of the dividends received from a 25%-owned subsidiary if the parent company and the subsidiary have their registered office in a Central African Economic and Monetary Community (CEMAC) country (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon). However, in this case, the withholding tax credit described in the above paragraph is not allowed.

A parent corporation receiving dividends from a 20%-owned Gabonese subsidiary may offset such net dividends against its own distributions subject to withholding tax.

**Foreign Tax Relief.** In general, foreign tax credits are not allowed; income subject to foreign tax that is not exempt from Gabonese tax under the territoriality principle is taxable net of the foreign tax. A tax treaty with France, however, provides a tax credit that corresponds to the withholding tax on dividends.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the rules contained in the general accounting plan of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA).

Business expenses are generally deductible unless specifically excluded by law. The following expenses are deductible only if they are normal and substantiated: head office overhead and remuneration for certain services (studies and technical, financial or administrative assistance) paid to nonresidents; and royalties from patents, brands, models or designs paid to a non-CEMAC corporation participating in the management of, or owning shares in, the Gabonese corporation.

The following expenses are not deductible:

- Rent expense for movable equipment paid to a shareholder holding, directly or indirectly, more than 10% of the capital;
- A portion of interest paid to a shareholder in excess of the central bank annual rate plus two points and, if the shareholder is in charge of management, on the portion of the loan exceeding one-half of the capital stock;
- Commissions and brokerage fees exceeding 5% of purchased imports;
- Certain specific charges, penalties and corporate tax; and
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director), gifts and subsidies.

**Inventories.** Inventories are normally valued at cost or market value. Cost must be determined on a weighted-average cost price method. A first-in, first-out (FIFO) basis is also generally acceptable.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by the tax law. The following are some of the applicable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	8 to 20
Plant and machinery and transport equipment	8 to 33
Office equipment	15 to 25

An accelerated depreciation method may be used for certain fixed assets acquired after 1 January 1990, subject to the approval of the tax authorities.

**Relief for Tax Losses.** Losses may be carried forward three years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** Gabonese law does not allow the filing of consolidated tax returns or provide any other form of tax relief for groups of companies.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Business activity tax ( <i>patente</i> ), calculated based on the nature of the business, the value of equipment and the number of employees	Various
Special tax on subcontractors of petroleum companies — a global tax including a contractual payment amount, income tax, vocational training tax and payroll tax; on taxable turnover	8.33
Registration duties, on transfers of real property or businesses	4 to 10
Social security contributions, on an employee's gross salary; limited to FCFA 1.5 million a month	
Employer	20.1
Employee	2.5
Value-added tax (VAT); on corporations realizing annual turnover in excess of FCFA 80 million from general business activities, on corporations realizing annual turnover in excess of FCFA 60 million from rendering services, on corporations realizing annual turnover in excess of FCFA 500 million from forestry activities and on specified medium-sized companies realizing annual turnover in excess of FCFA 40 million	
Standard rate	18
Reduced rate, on certain items such as sugar	10
Withholding tax on local service providers that are not subject to VAT; tax based on the total amount of the invoice	9.5

## E. Foreign-Exchange Controls

The CEMAC Act, dated 29 April 2000, provides exchange-control regulations, which apply to financial transfers outside the franc zone, which is a monetary zone including France and its former overseas colonies.

## F. Treaty Withholding Tax Rates

Gabon has signed a multilateral tax treaty with the CEMAC members, which were formerly members of the Central African Economic and Customs Union (UDEAC). Gabon has also entered into the Organisation Commune Africaine et Mauricienne (OCAM) multilateral tax treaty, as well as tax treaties with Belgium and France. The withholding rates under these multilateral treaties and the treaties with Belgium and France are listed in the following table.

	Dividends	Interest	Royalties
	%	%	%
Belgium	20	20	10
Benin	20	20	– (a)
Cameroon	20	20	– (a)
Central African Republic	20	20	– (a)
Chad	20	20	– (a)
Congo (b)	20	20	– (a)
Côte d’Ivoire	20	20	– (a)
Equatorial Guinea	20	20	– (a)
France (d)	20	20	10
Senegal	20	20	– (a)
Togo	20	20	– (a)
Nontreaty countries	20	10 (c)	10

- (a) No withholding tax is imposed, but the income is subject to tax in the state of the recipient.
- (b) Congo and Gabon have signed both the CEMAC (UDEAC) and OCAM treaties. The withholding rates are the same under each treaty.
- (c) See footnotes (e) and (f) to Section A.
- (d) Gabon has signed a protocol to its tax treaty with France, but the protocol has not yet been ratified. The rates listed in the table are those under the existing treaty between the countries.

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*Because of the rapidly changing economic and political situation in Georgia, changes are expected to be made to the Tax Code of Georgia. As a result, readers should obtain updated information before engaging in transactions.*



**A. At a Glance**

Corporate Profits Tax Rate (%)	15
Capital Gains Tax Rate (%)	15
Permanent Representation Tax Rate (%)	15
Withholding Tax (%)	
Dividends	10
Interest	10
Royalties from Patents, Know-how, etc.	10
Management Fees	10
Income from International Transport or International Communications	4
Insurance Premiums	4
Income from Oil and Gas Operations	4
Payments of Other Georgia-Source Income to Foreign Companies	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

**B. Taxes on Corporate Income and Gains**

**Corporate Profits Tax.** Enterprises carrying on activities in Georgia, including enterprises with foreign investment, are subject to tax. Enterprises with foreign investment include 100% foreign-owned subsidiaries, joint ventures and foreign legal entities operating through a permanent establishment.

Georgian legal entities are subject to tax on their worldwide income. For tax purposes, Georgian legal entities are entities incorporated in Georgia, including 100%-owned subsidiaries of foreign companies, and legal entities incorporated in a foreign country, but managed in Georgia.

Foreign legal entities are subject to tax on Georgian-source income only. Income earned through a permanent establishment in Georgia, reduced by tax-deductible expenses, is taxed at the regular corporate tax rate of 15%. A permanent establishment is defined as any permanent location for business activities in Georgia and generally includes any organization or natural person who represents a foreign legal entity conducting commercial activities in Georgia. Domestic tax law and double tax treaties list activities that do not result in a taxable permanent establishment. Foreign legal entities without a permanent establishment in Georgia are subject to withholding tax on their Georgian-source income at a rate of 4% or 10% (see Section A).

Georgian law allows foreign investment in various forms, including investment through 100% foreign-owned subsidiaries, share participations in joint stock companies and in joint ventures with Georgian legal entities and citizens, permanent establishments and other types of participations.

**Tax Rate.** The regular corporate tax rate is 15%.

**Capital Gains.** Capital gains are included in taxable profits and are subject to tax at the regular corporate tax rate. Capital losses can be offset against capital gains only. Capital losses in excess of capital gains cannot be deducted against other income, but can be carried forward for up to five years.

**Administration.** The tax year is the calendar year.

Both Georgian legal entities and foreign legal entities conducting business activities in Georgia through a permanent establishment must make advance payments of profits tax. Each payment is equal to 25% of the profits tax liability for the preceding year. The due dates for the payments are 15 May, 15 July, 15 September and 15 December. Advance payments of tax are applied against the profits tax liability for the current tax year.

If the total advance payments exceed the tax due for the tax year, the excess is applied against any outstanding liabilities for other taxes. If no outstanding tax liabilities exist, taxpayers may apply for a refund. However, in practice, refunds are rare, and accordingly taxpayers may need to apply overpayments against future tax liabilities.

The annual profits tax return must be filed and the profits tax paid before 1 April of the year following the tax year.

Interest is charged on late tax payments at a rate of 0.07% of the tax due for each day of delay. If the tax return is not filed by the due date, a penalty is imposed. This penalty equals 5% of the amount of tax payable stated in the tax return for each month of delay. However, the amount of the penalty may not be less than GEL 200 for each month. A penalty for an understatement of tax in a tax return of up to GEL 15,000 is imposed at a rate of 25% of the understated amount. The percentage increases to 50% for understatements of between GEL 15,000 and GEL 25,000 and to 75% for understatements exceeding GEL 25,000.

**Dividends.** A 10% withholding tax is imposed on dividends paid by Georgian enterprises to individuals and foreign legal entities. However, dividends paid to Georgian legal entities are not subject to withholding tax and are not included in taxable profits.

**Interest.** A 10% withholding tax is imposed on interest payments if the source of revenue is located in Georgia.

**Foreign Tax Relief.** Foreign income tax paid on income generated from foreign sources may be credited against Georgian tax imposed on the same income, limited to the amount of such Georgian tax.

### **C. Determination of Trading Income**

**General.** Taxable profits include the following: trading profits; capital gains; profits from financial activities; gratuitously received assets, works and services; and other items of income. Income received in foreign currency is converted into Georgian lari (GEL) at the daily exchange rate determined by the National Bank of Georgia for the date of receipt of the income.

In general, taxpayers may deduct all expenses contributing to the generation of taxable income. However, certain expenses are non-deductible or partially deductible.

Non-deductible expenses include the following:

- Expenses related to “non-economic” activity, which include social expenses, charitable expenses in excess of 8% of taxable income before taking into account the charitable expenses, contributions to nonprofit funds and entertainment expenses;

- Expenses related to the generation of income exempt from profit or income tax;
- Penalties and fines paid or payable to the Georgian state budget;
- Interest expenses exceeding an annual rate of 24%;
- Provisions for doubtful receivables (see *Provisions* below); and
- Fixed asset repair expenses in excess of 5% of the balance of the corresponding group of fixed assets at the end of the year.

To calculate taxable profits, an enterprise must use the same method of accounting (cash or accrual method) that is used in its financial accounting.

**Inventories.** Inventories are valued at the lower of cost or market. Costs for storage and transportation must be included in the value of inventory. The first-in, first-out (FIFO), last-in, first-out (LIFO) or average cost method may be used to value inventory.

**Provisions.** Banks may deduct allocations to reserves for bad debts. Doubtful receivables may be deducted only if they have been written off in financial accounting books. Insurance companies may deduct allocations to reserve funds for claims payouts. No other provisions are deductible.

**Tax Depreciation.** Depreciation charges for fixed assets used in economic activities are deductible for tax purposes in accordance with the rates and conditions set forth in the tax code.

Fixed assets with a value below GEL 1,000 (approximately US\$610) can be fully deducted from gross income in the year of acquisition of the assets.

Fixed assets are allocated to groups, which are depreciated as whole units. If at the end of a tax year, all fixed assets in a group are realized or liquidated or the balance of the group is less than GEL 1,000 (approximately US\$610), the entire balance of the group may be claimed as a tax deduction.

The amount of depreciation for each group is calculated by applying the depreciation rates for the group to the book value of the group at the end of the tax year. The following are the principal assets and depreciation rates for each group.

Group	Assets	Depreciation Rate (%)
1	Passenger cars; automobile equipment for use on roads; office furniture; automotive transport rolling stock; trucks, buses, special automobiles and trailers; machinery and equipment for all sectors of industry and the foundry industry; forging and pressing equipment; construction equipment; and agricultural vehicles and equipment	20
2	Special instruments, inventory and equipment; computers, peripheral devices and data processing equipment; and electronic devices	20

Group	Assets	Depreciation Rate (%)
3	Railway, naval and river transport vehicles; power vehicles and equipment; thermal technical equipment and turbine equipment; electric engines and diesel generators; electricity transmission and communication facilities; and pipelines	8
4	Buildings and construction structures	5
5	Assets subject to depreciation that are not included in the other groups	15

Taxpayers may apply accelerated depreciation rates for Groups 2 and 3, but these rates may not be higher than double the rates provided in the above table.

Intangible assets are amortized over their useful lives, and the amortization expenses are tax-deductible. Expenses incurred to purchase or produce amortized fixed assets are not capitalized if they had previously been deducted from gross income.

Taxpayers may use an alternative method to compute the deduction of expenditure on fixed assets that are purchased, produced or leased. A company may fully deduct the cost of such assets in the year of their exploitation. These fixed assets are not included in the asset groups for depreciation. If a company uses the alternative method, it must use the method for all fixed assets purchased, produced or leased for a five-year period. This measure applies to fixed assets purchased, produced or leased on or after 1 January 2005.

**Relief for Losses.** Enterprises may carry forward a loss incurred in a tax year to the following five tax years. Losses may not be carried back.

**Groups of Companies.** Georgian law does not contain any measures allowing members of a group to offset profits and losses.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on goods sold and services rendered, excluding exports from Georgia; reverse-charge VAT is imposed on works and services carried out in Georgia by nonresident entities	18
Assets tax, on the annual average net book value of fixed assets	1

Georgia also imposes several other minor federal and local taxes.

#### E. Foreign-Exchange Controls

The Georgian currency is the lari (GEL). The lari is a nonconvertible currency outside Georgia. Enterprises may buy or sell foreign currencies through authorized banks or foreign-exchange offices in Georgia.

Georgia does not impose restrictive currency control regulations. Individuals and enterprises may open bank accounts abroad without any restriction if they declare such accounts with the tax authorities. In general, all transactions performed in Georgia between Georgian entities or individuals must be performed in lari. Transactions with nonresident entities may be conducted in other currencies.

## F. Treaty Withholding Tax Rates

Georgia considers none of the tax treaties of the former USSR to be in force, with the exception of the USSR's treaties with France and Germany. Georgia has also entered into tax treaties with several countries. The following table lists the withholding tax rates under these treaties.

	Dividends %	Interest %	Royalties %
Armenia	5/10 (a)	10	5
Austria	0/5/10 (b)	0	0
Azerbaijan	10	10	10
Belgium	10	10	10
Bulgaria	10	10	10
China	0/5/10 (b)	10	5
Czech Republic	5/10 (a)	8	5/10 (g)
Greece	8	8	5
Iran	5/10 (a)	10	5
Italy	5/10 (a)	0	0
Kazakhstan	15	10	10
Latvia	5/10	10	10
Lithuania	5/15 (c)	10	10
Netherlands	0/5/15 (d)	0	0
Poland	10	10	10
Romania	8	10	5
Turkmenistan	10	10	10
Ukraine	5/10 (a)	10	10
United Kingdom	0/5/10 (e)	0	0
Uzbekistan	5/15 (f)	10	10
Nontreaty countries	10	10	10

- (a) The 5% rate applies if the recipient is a company that owns at least 25% of the capital of the payer of the dividend. The 10% rate applies to other dividends.
- (b) The 0% rate applies if the recipient is a company that directly or indirectly owns at least 50% of the capital of the payer of the dividend and that has invested more than €2 million in the payer. The 5% rate applies if the recipient is a company that directly or indirectly owns at least 10% of the capital of the payer of the dividend and that has invested more than €100,000 in the payer. The 10% rate applies to other dividends.
- (c) The 5% rate applies if the recipient is a company that owns at least 25% of the capital of the payer of the dividend and if the total value of the recipient's investment is at least €75,000. The 15% rate applies to other dividends. However, for dividends paid by Georgian enterprises, the 15% rate is reduced to 10% which is the dividend withholding tax rate under Georgian domestic law.
- (d) The 0% rate applies if the recipient is a company that owns at least 50% of the capital of the payer of the dividend and that has invested more than US\$2 million in the payer. The 5% rate applies if the recipient is a company that owns at least 10% of the capital of the payer of the dividend. The 15% rate applies to other dividends. However, for dividends paid by Georgian enterprises, the 15% rate is reduced to 10% which is the dividend withholding tax rate under Georgian domestic law.
- (e) The 0% rate applies if the recipient is a company that controls, directly or indirectly, at least 50% of the voting power in the payer of the dividends and that has invested at least £2 million (or the equivalent amount in the currency of Georgia) in the share capital of the payer as of the date of payment of

- the dividends. The 5% rate applies if the beneficial owner of the dividends is a company that controls, directly or indirectly, at least 10% of the voting power of the payer of the dividends. The 10% rate applies to other dividends.
- (f) The 5% rate applies if the recipient is a company that owns at least 25% of the capital of the payer of the dividend. The 15% rate applies to other dividends.
- (g) The 5% rate applies to gross royalties received for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate applies to gross royalties received for patents, trademarks, designs or models, plans, secret formulas or processes, or computer software, or for information concerning industrial, commercial or scientific experience.

Georgia has signed and ratified tax treaties with Denmark, France, Germany and the Russian Federation, but these treaties have not yet entered into force.

Tax treaty negotiations are underway with Belarus, Cyprus, Estonia, Israel, Kyrgyzstan, Luxembourg, Malta, Moldova, Spain, Sweden, Tajikistan and Turkey.

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The 2008 Business Tax Reform, which is effective from 1 January 2008, and the 2007 Annual Tax Act have introduced major changes into the German tax law. Because of the numerous changes to the law, readers should obtain specific advice before engaging in transactions.

## A. At a Glance

Corporate Income Tax Rate (%)	15 (a)
Trade Tax Rate (Average Rate) (%)	14 (b)
Capital Gains Tax Rate (%)	15 (a)
Branch Tax Rate (%)	15 (a)
Withholding Tax (%) (a)(c)	
Dividends	20 (a)(c)(d)
Interest	0 (e)
Royalties from Patents, Know-how, etc.	20 (a)(c)(f)
Remuneration to Members of a Supervisory Board	30 (f)
Payments for Construction Work	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1 (g)
Carryforward	Unlimited (h)

- (a) A 5.5% tax surcharge is imposed (see Section B). The 2008 Business Tax Reform reduced the corporate income tax rate from 25% to 15%.
- (b) This is a local income tax imposed by municipalities. The rate varies from 13% to 20.5%, depending on the municipality. Under the 2008 Business Tax Reform, the base rate imposed by the trade tax law is reduced from 5% to 3.5%. Accordingly, the average trade tax rate is reduced from 18% to 14%. However, trade tax is no longer deductible as a business expense.
- (c) These rates may be reduced by tax treaties or under the European Union (EU) Parent-Subsidiary Directive.
- (d) This withholding tax applies to dividends paid to residents and nonresidents. Effective from 1 January 2009, the rate is increased to 25%. Dividends distributed by a German subsidiary to an EU parent company are exempt from withholding tax if the recipient owns 25% or more of the subsidiary. This exemption also applies if the participation is 10% or more and if the EU country where the parent company is located grants on a reciprocal basis the exemption to German corporate shareholders owning a participation of at least 10%.
- (e) A 30% interest withholding tax is imposed if a bank is the paying entity. For over-the-counter business, the rate is 35%. Over-the-counter business refers to bank transactions carried out over the bank counter, without the securities being on deposit at the bank. The interest withholding tax is not imposed on intercompany loans or interbank loans. Interest paid to nonresidents is not subject to the withholding tax, except for the 35% withholding tax on over-the-counter business. However, nonresidents may apply for a refund of the 35% withholding tax if a treaty exemption applies. A 25% withholding tax is imposed on certain types of debt instruments (see footnote (2) to Section F).
- (f) This withholding tax applies to payments to nonresidents only.
- (g) The loss carryback, which is optional, is available for corporate income tax purposes, but not for trade income tax purposes. The maximum carryback is €511,500.
- (h) The carryforward applies for both corporate income tax and trade tax purposes. Effective for tax years ending after 31 December 2003, the maximum loss carryforward that may be used for corporate and trade tax purposes is restricted to 60% of annual taxable income.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporations, such as stock corporations (*Aktiengesellschaft*, AG) and limited liability companies (*Gesellschaft mit beschraenkter Haftung*, GmbH), having their corporate seat or place of management within Germany (resident corporations) are subject to corporate income tax (*Koerperschaftsteuer*) on worldwide income, unless otherwise provided in tax treaties.



A nonresident corporation, whose corporate seat and place of management are located outside Germany, is subject to corporate income tax only on income derived from German sources. German-source income includes, among other items, business income from operations in the country through a branch, office or other permanent establishment, including a permanent representative, and income derived from the leasing and disposal of real estate located in Germany.

**Rates of Corporate Income Tax.** Corporate income tax is payable at a rate of 15% of taxable income, regardless of whether the income is distributed or retained.

A 5.5% surcharge is imposed on corporate income tax, resulting in an effective tax rate of 15.825% (before the 2008 Business Tax Reform, the rate was 26.375%). Prepayments of corporate income tax and withholding tax payments are also subject to this surcharge.

Companies that continue to have a corporation income tax credit balance resulting from retained earnings taxed in the years for which the imputation tax credit system applied (1999 and earlier years) will receive a refund of such remaining balance in 10 equal amounts during the period of 2008 through 2017.

**Trade Tax.** Municipalities impose a trade tax on income. However, for purposes of this tax, taxable income is subject to certain adjustments. The major adjustments include a 25% add-back of interest on long-term debt, a 25% add-back of lease payments for movable assets and a 75% add-back of lease payments for immovable assets. Under the 2008 Business Tax Reform, the base rate imposed by the trade tax law (to which a multiplier set by the municipality is applied) is reduced from 5% to 3.5%. The municipalities may not increase their local multiplier. As a result, the effective average trade tax rate is lowered from about 18% to 14%. Taking into account the various municipality multipliers, the combined average tax rate ranges from 29.83% to 33% (previously 38% to 40.5%). The combined effective tax burden is also affected by various changes with respect to the determination of the tax base, such as the elimination of the measures allowing declining-balance depreciation and the deductibility of the trade tax as a business expense.

If a company operates in several municipalities, the tax base is allocated according to the payroll paid at each site. Certain enterprises, such as banks and real estate companies, receive privileged treatment under the trade tax law.

**Withholding Tax on Construction Work.** Value-added tax (see Section D) taxpayers and bodies corporate under public law (for example, cities and municipalities) must withhold a tax of 15% from payments made for construction work. The tax must be withheld even if the work provider does not have a tax presence in the form of a permanent establishment or permanent representative in Germany unless the work provider obtains a “certificate of non-taxation” from the competent tax office. Construction work providers may obtain a refund of the withholding tax if they can prove that no German tax liability against which the withholding tax could be applied exists.

**Capital Gains and Losses.** Capital gains of corporations, except those derived from sales of shares, are treated as ordinary income. However, rollover relief is granted if gains derived from disposals of real estate are reinvested in real estate within four years and if certain other conditions are met.

Capital gains derived by corporations from sales of shares in corporations are exempt from corporate income tax and trade tax. However, 5% of the capital gain is deemed a nondeductible expense and, accordingly, the exemption is limited to 95% of the capital gain. This also applies to nonresident corporate sellers that owned at least 1% of the capital stock of a German company at any time during the five years preceding the sale, if the foreign seller cannot claim treaty protection.

To the extent that write-downs of the shares have previously been deducted, normal income taxes are imposed on sales of these shares. If the shares were acquired through a tax-free contribution of a business or division of a business in exchange for shares, a seven-year holding period is required for the exemption. For capital gains derived from sales of shares that were acquired in a tax-free share-for-share exchange, the exemption does not apply if the shares were acquired in a tax-free contribution of a business or division of a business and if the seven-year holding period has not expired.

To prevent certain abuses, a German corporation that receives shares below fair market value through an individual's contribution to capital is subject to tax on capital gains derived from sales of such shares within seven years after date of the contribution.

In general, capital losses are deductible. However, capital losses are not deductible if a gain resulting from such transaction would have been exempt from tax. In particular, this rule applies to capital losses from the sale of shares or from write-downs on shares. In addition, capital losses and write-downs on loans to related parties may not be deductible under certain circumstances.

**Administration.** The tax year is the calendar year. If a company adopts an accounting period that deviates from the calendar year, tax is assessed for the taxable income in the accounting period ending within the calendar year. The adoption of a tax year other than the calendar year requires the consent of the tax office.

Annual tax returns must be filed on 31 May of the year following the tax year. However, extensions are granted if an application is submitted or if a licensed tax consultant prepares the return.

Payments on account of the estimated corporate income tax liability, usually determined at one-quarter of the liability for the previous year, are due on 10 March, 10 June, 10 September and 10 December. Prepayments of trade income tax are due on 15 February, 15 May, 15 August and 15 November. Final payments are due one month after the tax assessment notice issued by the tax authorities is received by the taxpayer.

Late tax payments as well as tax refunds are generally subject to interest at 0.5% per month. Interest begins to accrue 15 months after the end of the calendar year for which the tax is assessed. The interest is not deductible for corporate income tax purposes

if the tax itself is not deductible. Late payment penalties are also charged at 1% a month if the unpaid balance is not settled within one month from the date of the assessment notice issued by the tax office. A penalty of up to 10% of the tax liability, but not more than €25,000, can be assessed if the tax return is not filed by the due date, including extensions granted.

**Dividends.** Dividends received by German companies and branches of nonresident companies from their German and foreign subsidiaries are exempt from tax. This results from the introduction of a participation exemption (comparable to a full dividend-received deduction) for all intracorporate domestic or foreign dividends. The law imposes neither a minimum shareholding requirement nor a minimum holding period requirement for the participation exemption. The exemptions described above are contained in the domestic tax code. However, an applicable tax treaty may also provide an exemption for foreign dividends.

Five percent of the tax-exempt dividend income received from foreign subsidiaries is treated as a nondeductible expense, while the expenses actually accrued are deductible.

For dividend income received in tax years ending after 31 December 2003, the 95% exemption rule applies to dividends received from both resident and nonresident corporations.

Expenses related to such income are fully deductible for corporate tax purposes.

Dividends received from corporations in which the parent holds less than 10% at the beginning of its fiscal year are subject to trade tax. The same rule applies to dividends received from non-EU corporations, regardless of the percentage of ownership, if passive income accounts for more than 10% of the foreign corporation's gross income.

**Foreign Tax Relief.** Under German domestic tax law, foreign-source income, except for foreign intracompany dividends (see *Dividends* above), is usually taxable, with a credit for foreign income taxes paid, up to the amount of German tax payable on the foreign-source income, subject to per-country and per-item limitations. Excess foreign tax credit cannot be carried back or carried forward. Instead of a foreign tax credit, a deduction may be claimed for foreign income tax. This may be beneficial in loss years and in certain other instances. German tax treaties normally provide an exemption from German taxation of income from foreign real estate and foreign permanent establishments.

### C. Determination of Trading Income

**General.** Taxable income of corporations is based on the annual financial statements, prepared under German generally accepted accounting principles (GAAP), subject to numerous adjustments for tax purposes. After the annual financial statements have been presented to the tax authorities, they may be changed only to the extent necessary to comply with GAAP and the tax laws.

Acquired goodwill must be capitalized for tax purposes, but may be amortized over 15 years. Intangibles acquired individually must also be capitalized for tax purposes and may be amortized over their useful lives (normally between 5 and 10 years). A com-

pany's own research and development and start-up and formation expenses may not be capitalized for tax purposes and must be currently expensed.

**General Interest Limitation.** The 2008 Business Tax Reform introduced a new concept for the restriction of the interest deduction. This restriction applies regardless of whether the interest is paid to a related party or an unrelated lender, such as a bank. The new rule, which is effective for tax years beginning after 25 May 2007 and ending on after 1 January 2008, applies to companies resident in Germany, companies residing abroad but maintaining a permanent establishment in Germany and partnerships with a German branch.

The new rule disallows "excess net interest expense," which is defined as the excess of interest expenses over interest income if such excess exceeds 30% of the earnings before (net) interest, tax, depreciation and amortization (EBITDA). The limitation rule does not apply if any of the following conditions is satisfied:

- The net interest expense is less than €1 million.
- The company is not a member of a consolidated group (a group of companies that can be consolidated under International Financial Reporting Standards [IFRS]).
- The equity ratio of the German subgroup is equal to or higher than the equity ratio for the group as a whole, as shown on the balance sheet of the preceding fiscal year (so-called "escape clause"). A "group" is defined as a group of entities that could be consolidated under IFRS, regardless of whether a consolidation has been actually carried out. The escape clause does not apply if any entity in the worldwide group has received loans from a related party not included in the group and if the interest paid on such debt exceeds 10% of the net interest expense.

**Inventories.** Inventory is basically valued at acquisition cost or production cost, unless a lower value, in accordance with the lower of cost or market principle, is indicated. Under certain conditions, the last-in, first-out (LIFO) method can be used to value inventory assets, provided they are of a similar type.

**Provisions.** Until recently, provisions established under German GAAP have been broadly accepted for tax purposes. However, in the past few years, the scope of tax-deductible provisions has been severely limited by certain rules, including, among others, the following:

- Liabilities or accruals of obligations whose fulfillment is contingent on future revenue or profit may only be recorded when the condition occurs;
- Provisions for foreseeable losses from open contracts may not be established;
- Future benefits arising in connection with the fulfillment of an obligation must be offset against costs resulting from the obligation;
- Only the direct cost of nonmonetary obligations may be accrued;
- Provisions for obligations resulting from the operation of a business must be built up in equal increments over the period of operation; and
- Provisions for pension obligations must be calculated on an actuarial basis using an interest rate of 6% and built up over the period of employment.

Non-interest bearing long-term debt must be discounted at an annual rate of 5.5% if the remaining term exceeds 12 months.

**Depreciation.** Effective from 2008, tax depreciation must be calculated using the straight-line method. Useful lives of movable assets are published by the Ministry of Finance based primarily on tax audit experience; deviation from published useful life is possible, but requires justification by the taxpayer. Tax depreciation rates for buildings are provided by law. The Federal Ministry of Finance has published tax depreciation rates for movable fixed assets generally usable in trade and industry. Schedules for assets specific to certain industries are also available. The following are some of the straight-line rates under the general list.

<b>Asset</b>	<b>Rate (%)</b>
Office equipment	6 to 14
Motor vehicles	16.6
Plant and machinery	6 to 10
Airplanes	5
Personal computers or notebooks and related equipment	33.3
Nonresidential buildings (offices and factories)	
Constructed before 1 January 1925	2.5
Constructed after 31 December 1924 and application for the construction permit filed before 1 April 1985	2
Application for the construction permit filed after 31 March 1985	3*

\* Accelerated depreciation is allowed for buildings that are newly constructed in Germany.

**Mark-to-Market Rule.** Under a mark-to-market rule, a tax deduction for the write-down of an asset because of a permanent impairment in value is allowed only if the value is permanently lower. This rule is particularly relevant for assets that are not subject to ordinary depreciation, such as land or shares. For assets that have been written down to their going concern value, the write down must be reversed as soon as and to the extent that the asset has increased in value.

**Disallowed Items.** After income for tax purposes has been determined, certain adjustments must be made to arrive at taxable income. Major adjustments include the add-back of the following: corporate income tax; 50% of supervisory board fees; 20% of entertainment expenses and input value-added tax regarding such expenses; gifts to non-employees exceeding €40 per person per year; and expenses incurred in direct connection with tax-exempt income items (see the discussion regarding dividends in Section B). In addition, as a result of the recently introduced exemption for capital gains derived from sales of shares (see Section B), losses from sales of shares or write-downs of shares are no longer deductible for tax purposes and must be added back to the tax base.

**Hidden Distribution of Income.** Adjustments to taxable income as a result of a violation of arm's length principles are treated as a hidden distribution of income.

**Tax Losses.** Tax losses may be carried forward without a time limit. For corporate income tax (not trade tax) purposes, an optional

loss carryback is allowed for one year. The maximum carryback is €511,500.

The 2008 Business Tax Reform introduced new rules regarding the treatment of tax losses if changes of ownership in the loss company occur. (For ownership changes made before 1 January 2008, the old rules still must be observed with respect to the injection of a specified amount of new assets into the loss companies during a period of at least two years after the change of ownership has occurred.) Under the new rules, tax losses expire proportionally if, within a five-year period, more than 25% of the shares of a loss entity is directly or indirectly transferred to one acquirer or an entity related to such acquirer. If, within such five-year period, more than 50% of the shares is transferred, the entire remaining loss expires. To prevent circumvention of these rules, the new rules include a measure under which investors with common interests acting together are deemed to be one acquirer for the purposes of the rules.

Under the new Reorganization Tax Act, the rules applicable to the use of losses after a merger are changed. In general, the existing tax losses of a merged company expire and are not transferred to the surviving company.

Effective for fiscal years ending after 31 December 2003, taxable income exceeding €1 million may only be reduced by loss carry-forwards up to 60%. As a result, 40% of such excess always triggers tax (so-called “minimum taxation”).

**Groups of Companies.** German tax law provides for the filing of a consolidated tax return for a German group of companies (Organschaft), which allows losses of group companies to be offset against profits of other group companies. The German parent company must file the consolidated tax return. Only German companies in which the German parent company holds the majority of the voting shares at the beginning of the fiscal year of the subsidiary may be included (this requirement is known as financial integration). The tax consolidation covers corporate income tax, trade tax and value-added tax (VAT). To make the Organschaft effective for corporate income tax and trade tax purposes, the German parent company and the German subsidiaries must enter into a profit-and-loss absorption agreement (Gewinnabfuhrungsvertrag).

A nonresident company may become the head of a German consolidated group if the following requirements are satisfied:

- The company has registered a branch in the German Commercial Register;
- The profit-and-loss absorption agreement with the German group companies is entered into under the firm name of the branch; and
- The investments in the German subsidiaries are assets of the German branch.

The Organschaft for VAT requires the following:

- Financial integration;
- Economic integration of the lower-tier entities; and
- Integration in organizational matters.

In contrast to the other Organschaft forms, Organschaft for VAT can begin and end within the same fiscal year.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Real property tax, on assessed standard value of real property; rate varies by municipality	0.5 to 1.5
Real estate transfer tax (RETT), on sales and transfers of real property, including buildings, and on certain transactions that are deemed to be equivalent to transfers of real property, such as the assignment of at least 95% of the shares of a German or foreign company that holds title to domestic real property; levied on purchase price of real property or, in certain situations (such as when at least 95% of the shares of a real estate-owning company are transferred), on the assessed standard value of the real property	3.5
Value-added tax (Umsatzsteuer); on application, foreign enterprises may receive refunds of German VAT paid if they do not generate taxable turnover in Germany; such application must be filed by 30 June of the year following the year of the taxable transaction	
Standard rate	19
Reduced rate	7

## E. Miscellaneous Matters

**Foreign Losses.** Losses incurred by foreign permanent establishments are not deductible if a German tax treaty provides that a permanent establishment's income is taxable only in the country where it is located. However, such losses may be taken into account if they are incurred in nontreaty countries or if a tax treaty provides for the credit method, subject to the condition that the foreign branch is engaged in a specified active trade.

**Foreign-Exchange Controls.** No controls are imposed on the transfer of money in and out of Germany under current law. However, specific reporting requirements for certain transactions must be met.

**Debt-to-Equity Rules.** The general interest limitation (see Section C) has replaced the former thin-capitalization rules. The remaining related-party debt rules are now combined with the general interest limitation rules.

**Antiavoidance Legislation.** Antiavoidance legislation is found in several tax laws. The Corporate Tax Law deals with hidden distributions of income by corporations, both within Germany and abroad. The Foreign Tax Affairs Law deals with all kinds of related or affiliated taxpayers, such as individuals, partnerships and corporations, and restricts itself to cross-border transactions. It contains extensive provisions on controlled foreign company and passive foreign investment company income. The General Tax Code contains a general antiavoidance rule stating that a tax liability cannot be effectively avoided by an abuse of legal forms and methods if obtaining a tax advantage is the only reason for such an arrangement.

The Income Tax Law provides antiabuse rules against the unjustified reduction of German withholding taxes under a tax treaty or under the EU parent-subsidiary directive (treaty or directive shopping). The 2007 Annual Tax Act tightened the so-called “anti-treaty shopping” rule and imposes an increased substance requirement for foreign holding and licensing companies. Under the new rules, treaty and EU directive benefits are denied if no business or other significant nontax reasons exist for the interposition of the foreign entity (see Section F).

Germany’s newer tax treaties include “switch-over” clauses as well as “subject-to-tax” clauses.

**Transfer Pricing.** The German tax law contains a set of rules that allow the adjustment of transfer prices. These rules include general measures on constructive dividend payments and constructive capital contributions and a specific adjustment provision in the controlled foreign company (CFC) legislation. All of the measures mentioned in the preceding sentence are based on the arm’s length principle.

The Foreign Transaction Tax Code now expressly provides that the preferential basis for determining the transfer price are the standard price methods (comparable uncontrolled price method, resale minus method and cost-plus method) if comparable transactions can be determined. In addition, the code contains express language with respect to the determination of the arm’s length character of a transfer price if no comparables can be found. For business reorganizations, a special set of rules directed at securing the German tax revenue have been incorporated in the code.

Specific documentation rules apply, and noncompliance may result in penalties of 5% to 10% of an adjustment following an audit of transfer prices.

**Real Estate Investment Trusts.** Effective from 1 January 2007, Germany introduced the real estate investment trust (REIT), which is a tax-exempt entity. In general, a REIT is a listed German stock corporation (AG) that satisfies all of the following conditions:

- It has a free float (volume of shares traded on the stock exchange) at the time of listing of at least 25%;
- Its real estate assets account at least for 75% of its gross assets;
- Rental income from real estate accounts at least for 75% of its total income; and
- Ninety percent of its income is distributed to its shareholders.

## F. Treaty Withholding Tax Rates

The rates listed below reflect the lower of the treaty rate, the rate under domestic tax law or the rate under the EU Parent-Subsidiary Directive, which has been incorporated into the German Income Tax Code (Section 43b).

The 2007 Annual Tax Act tightened the domestic antiavoidance rules (Sec 50 d III ITA). It denies benefits under the treaties or an EU directive for a foreign recipient of dividends, interest or royalties, if any of the following circumstances exist:

- The parent company of the recipient would not be entitled to an equal treaty benefit had it received the income directly and the interposition of the intermediate holding company cannot be justified by good business reasons;



- The foreign recipient of the income does not derive at least 10% of its gross income from its own trading operations; or
- The foreign recipient does not participate in the general commerce with fully equipped business facilities.

	<b>Dividends (1)</b> %	<b>Interest (2)</b> %	<b>Royalties</b> %
Argentina	15 (c)	15 (d)(e)(f)	15
Australia (aa)	15	10 (e)	10
Austria	0 (y)(jj)	0	0
Azerbaijan	5 (y)	10 (o)	5/10 (oo)
Bangladesh	15	10 (d)(e)	10
Belarus	5 (c)(y)	5 (e)(o)	3 (t)
Belgium	0 (y)(jj)	15 (e)(h)	0
Bolivia	10 (c)	15 (e)	15
Bulgaria	15 (c)	0 (d)	5
Canada	5 (c)(y)	10 (d)(i)	10 (q)
China (u)	10 (c)	10 (d)(e)	10 (r)
Côte d'Ivoire	15 (c)	15 (d)(e)	10
Croatia	5 (y)	0	0
Cyprus	0 (a)(y)(jj)	10 (a)(e)	0 (a)(s)
Czechoslovakia (gg)	0 (y)(jj)	0	5
Denmark	0 (y)(jj)	0	0
Ecuador	15	15 (e)(f)	15
Egypt	15 (c)	15 (d)(e)(bb)	15 (p)
Estonia	5 (c)(y)	10 (d)(e)	10 (r)
Finland	0 (c)(y)(jj)	0	5 (t)
France	0 (c)(y)(z)(jj)	0	0
Greece (aa)	0 (y)(jj)	10 (e)	0 (n)
Hungary	0 (c)(y)(jj)	0 (d)	0
Iceland (aa)	5 (y)	0	0
India	10 (c)	10 (d)(e)	10
Indonesia	10 (c)(y)	10 (d)(e)(z)	15 (cc)(ff)
Iran	15 (y)	15 (e)	10
Ireland	0 (a)(jj)	0 (a)	0 (a)
Israel	20 (a)	15 (a)(e)	5 (a)(q)
Italy	0 (c)(y)(jj)	10 (d)(e)	5 (q)
Jamaica	10 (y)	12.5 (e)(k)	10
Japan	15 (c)	10 (e)	10
Kazakhstan	5 (c)(y)	10 (d)(e)(mm)	10
Kenya	15	15 (e)	15
Korea	5 (c)(y)	10 (e)(k)	10
Kuwait	5 (c)(y)	0 (d)	10
Latvia	5 (c)(y)	10 (b)(e)	10 (r)
Liberia	10 (y)	20 (e)(k)	10 (v)
Lithuania	5 (c)(y)	10 (b)(e)	10 (r)
Luxembourg (ee)	0 (y)(jj)	0	5
Malaysia (aa)	5 (a)(y)	15 (a)(e)	10 (a)
Malta	0 (y)(jj)	0	0
Mauritius	5 (y)	20 (e)(m)	15
Mexico	5 (c)(y)	15 (d)(e)(kk)	10
Mongolia	5 (c)(y)	10 (d)(e)	10
Morocco	5 (a)(y)	10 (a)(e)	10 (a)
Namibia	10 (y)	0	10
Netherlands (aa)	0 (y)(jj)	0 (g)	0
New Zealand	15 (c)	10 (d)(e)	10
Norway	0 (c)(y)	0 (d)	0

	<b>Dividends (1)</b>	<b>Interest (2)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Pakistan	10 (y)	20 (e)(k)	10
Philippines (aa)	10 (y)	15 (e)(f)	10 (w)
Poland	0 (c)(y)(jj)	0 (d)	0
Portugal	0 (c)(y)(jj)	15 (d)(e)(k)	10
Romania	5 (c)(y)	3 (d)(e)	3
Russian Federation	5 (c)(y)	0	0
Singapore	5 (y)	8 (o)	8
South Africa (aa)	7.5 (y)(dd)	10 (a)	0 (a)
Spain	0 (y)(jj)	10	5
Sri Lanka	15 (c)	10 (d)(e)(o)	10
Sweden	0 (c)(y)(jj)	0 (d)	0
Switzerland	0 (c)(y)	0	0
Tajikistan	5 (y)	0	5 (oo)
Thailand (aa)	15 (y)	25 (e)(k)	15 (x)
Trinidad and Tobago	10 (a)(y)	15 (a)(e)(k)	10 (a)(t)
Tunisia	10 (y)	10 (e)	15 (t)
Turkey	15 (c)(y)	15 (e)	10
Ukraine	5 (c)(y)	5 (b)(d)(e)	5 (l)
USSR (hh)	15 (c)	5 (d)(e)	0
United Arab Emirates (pp)	5 (y)	0 (d)	0
United Kingdom	0 (a)(y)(jj)	0 (a)	0 (a)
United States	5 (c)(y)	0 (d)	0
Uruguay	15 (c)	15 (e)	15 (ff)
Uzbekistan	5 (c)(y)	5 (d)(e)	5 (r)
Venezuela (aa)	5 (y)	5 (e)	5
Vietnam	5 (c)(y)	10 (d)(e)(ll)	10 (nn)
Yugoslavia (ii)	15	0	10
Zambia	5 (y)	10 (e)	10
Zimbabwe	10 (c)(y)	10 (d)(e)	7.5
Nontreaty countries	20	35/25/0 (j)	20

- (1) These rates also apply to silent partnership income. Under German tax law, income from a silent partnership is regarded as a dividend if the silent partnership is characterized as a typical silent partnership. Profits from an atypical silent partnership are considered business profits. Income from participation rights (Genussrechte) is treated as a dividend if the holder participates in profits and liquidation results. Otherwise, the income from participation rights is considered to be interest for treaty purposes.
- (2) German interest withholding tax is imposed only on interest paid by banks (for details, see footnote (e) to Section A) and on interest payments on convertible and profit-sharing bonds and participating loans (rate of 25%). In addition, interest on loans secured by fixed property located in Germany is subject to a limited German tax liability; tax on such interest is not imposed by withholding tax but by the issuance of an assessment notice. If not otherwise noted, the treaty withholding tax rate also reduces the German statutory tax rate for interest on loans secured by fixed property located in Germany.
  - (a) The rate applies if the income is subject to tax in the other state.
  - (b) The rate is 2% (0% under the Latvia and Lithuania treaties) for interest on loans granted by banks or for interest on loans granted in connection with sales on credit of industrial, commercial or scientific equipment or sales of merchandise or services between enterprises.
  - (c) Silent partnership income is taxed at the domestic rate of 25% (Hungary, 15%). Effective from 1 January 2007, the United States treaty provides for a 0% rate if the participation is at least 80% for a period of 12 months.
  - (d) Interest on participating loans and profit-sharing bonds is taxed at 25%.
  - (e) Under the Bolivia and Kazakhstan treaties, interest is exempt from withholding tax if it is paid to a contracting state. Under the other treaties, interest paid to the contracting states or subdivisions or paid to certain banks may be exempt from withholding tax.

- (f) A 10% rate may apply to certain types of interest, such as interest paid on bank loans, or interest paid in connection with the sale of industrial, commercial or scientific equipment or with financing activities in the public sector (for Brazil, only in connection with footnote [k]).
- (g) Interest on convertible bonds and profit-sharing bonds is taxed at 15%.
- (h) Interest paid to an enterprise is exempt from withholding tax unless either of the following apply: the recipient is a company owning less than 25% of the paying company; or the interest is derived from bonds, except commercial bills of exchange.
- (i) Interest on securities issued by a contracting state or subdivision thereof or paid to certain state banks or to a contracting state or subdivision thereof is exempt from withholding tax.
- (j) Interest on loans secured by immovable property located in Germany may be subject to the 26.5% (25% from 2004) corporate income tax rate.
- (k) Interest payments to banks or on loans granted by banks may be subject to a 10% withholding tax rate. This applies to Brazil and Korea only if the term of the bank loan exceeds seven years.
- (l) A 0% rate applies to royalties for the use of, or right to use, scientific rights, patents, marks, samples, models, plans, formulas or procedures, as well as to royalties for the disclosure of industrial, commercial or scientific know-how.
- (m) Interest payments to a company that is genuinely carrying on a banking enterprise or is controlled by one or more companies genuinely carrying on such an enterprise are exempt from tax.
- (n) Royalties for motion picture films are treated as business profits.
- (o) Interest is exempt from withholding tax in Germany if the recipient is the government, the Central Bank of Azerbaijan or the national petroleum funds. Interest is exempt from withholding tax in Azerbaijan if it is paid on a loan guaranteed by the German government or if the recipient is the government, the German Central Bank, the Reconstruction Loan Corporation or the German Investment and Development Company (DEG).
- (p) Trademark royalties are taxed at a rate of 20%.
- (q) Copyright royalties for literary, dramatic, musical or artistic works (except motion picture films or television videotapes for Canada and Israel) are exempt from withholding tax.
- (r) For royalties in connection with the use of technical, commercial or scientific equipment, the rate is reduced to 7% under the China treaty, to 5% under the Estonia, Latvia and Lithuania treaties, to 2% under the Korea treaty and to 3% under the Uzbekistan treaty.
- (s) Royalties for films and television are taxed at a rate of 5%.
- (t) A 0% rate applies to royalties for the use of, or the right to use, copyrights, including those for films and television. For Tunisia, the rate is 10% and does not apply to film and television copyrights. For Finland and Tunisia, copyrights specifically include those for literary, scientific and artistic works. For Trinidad and Tobago, they specifically exclude film and television copyrights. Under the Belarus treaty, the rate is 5% for royalties paid for the use, or the right to use, copyrights of literary and artistic works, including films, television and broadcasts.
- (u) This treaty does not apply to Hong Kong and Macau.
- (v) A 20% rate applies to payments made for trademarks or for copyrights, excluding motion picture films or tapes for television or broadcasting.
- (w) Royalties for copyrights of literary or artistic works, motion picture films, or television or broadcasting are taxed at 20% (Philippines, 15%).
- (x) Royalties for copyrights of literary, artistic or scientific works are taxed at 5%.
- (y) The treaty withholding tax rate increases to 15% (Azerbaijan, Estonia, Mongolia, Switzerland, Tajikistan, Ukraine and the United States, 10%; Vietnam, 10%/15%; Iran, Thailand, Trinidad and Tobago, Turkey and Zimbabwe, 20%; Greece, 25%) if the recipient is not a corporation owning at least 25% (Austria, Canada, Croatia, Denmark, France, Kuwait, Malta, Mexico, Mongolia, Namibia, Poland, Romania, the Russian Federation, Singapore, Turkey, United Arab Emirates and the United States, 10%; Venezuela, 15%; Belarus, Pakistan, Switzerland and Ukraine, 20%; Vietnam, 25%/70%) of the distributing corporation. Under the Belarus treaty, the 20% participation must also have a value of at least €81,806.70 to qualify for the 5% rate.
- (z) Participating rights (Genussrechte) that qualify as equity are taxed at 20%.
- (aa) The treaty (or a protocol to the treaty) is being renegotiated.
- (bb) The rate is reduced to 0% for interest paid on a loan guaranteed by Hermes-Deckung (this relates to security given by the German government for loans in connection with deliveries by German suppliers to foreign customers, particularly customers in developing countries).

- (cc) The rate is reduced to 10% for royalties for the use of commercial or scientific equipment.
- (dd) The 7.5% rate applies to dividends paid to companies owning at least 25% of the voting shares of the payer. A 15% rate applies if a recipient company owns less than 25% of the voting shares and if it is subject to tax on such dividend income. Otherwise the full domestic German rate applies.
- (ee) Holding companies established under 1929 or 1937 laws are not eligible for treaty benefits.
- (ff) The withholding tax rate applicable to fees for technical services is 7.5% under the Indonesia treaty and 10% under the Uruguay treaty.
- (gg) Germany has agreed with the Czech Republic and the Slovak Republic to apply the treaty with the former Czechoslovakia. Germany is negotiating tax treaties with the Czech Republic and the Slovak Republic.
- (hh) Germany honors the USSR treaty with respect to all former Soviet republics except for Belarus, Estonia, Kazakhstan, Latvia, Lithuania, the Russian Federation and Ukraine. This has been acknowledged by Armenia, Georgia, Kyrgyzstan, Moldova and Turkmenistan. Germany has entered into tax treaties with Azerbaijan, Belarus, Estonia, Kazakhstan, Latvia, Lithuania, the Russian Federation, Tajikistan, Ukraine and Uzbekistan. Withholding tax rates under these treaties are listed in the above table. Germany is engaged in tax treaty negotiations with Georgia, Kyrgyzstan and Turkmenistan.
- (ii) The treaty with the former Yugoslavia applies to Bosnia-Herzegovina, Macedonia and Slovenia. Germany has entered into a tax treaty with Croatia. The tax rates under this treaty are listed in the above table. Germany initiated tax treaties with Slovenia on 6 May 1999 and with Macedonia on 12 September 2002.
- (jj) Dividends distributed by a German subsidiary to an EU parent company are exempt from withholding tax if the recipient owns 25% or more of the subsidiary. This exemption also applies if the participation is 10% or more and if the EU country where the parent company is located provides the exemption reciprocally. If the EU directive does not apply, the following rules apply: the withholding tax rate increases to 5% (Italy, Finland, Luxembourg, Malta, Netherlands and Spain, 10%) if the recipient owns at least 10% (Italy, Finland, Luxembourg, Netherlands and Spain, 25%) of the distributing company; and for Belgium, Czech Republic, Greece, Hungary, Ireland, Portugal, Sweden and the United Kingdom, the withholding tax rate increases to 15% (Ireland 10%, Greece 25%) for all shareholdings.
- (kk) The rate is 10% for interest on loans granted by banks, insurance companies and pension funds.
- (ll) The rate is reduced to 5% as long as German domestic law does not impose withholding tax on interest payments to nonresidents.
- (mm) The rate is 0% for interest in connection with sales of merchandise.
- (nn) The rate is reduced to 7.5% for royalties in connection with the use of technical equipment.
- (oo) Under the Tajikistan treaty, the 5% rate applies to the following:
  - Royalties for the use of, or the right to use, copyrights of literary or artistic works, including motion picture films, or for the use of, or the right to use, names, pictures or similar personal rights;
  - Royalties for the recording of artistic or athletic shows for television or radio broadcasting; and
  - Royalties for the use of, or the right to use, copyrights of scientific rights, patents, trademarks, samples, models, plans, formulas or procedures for commercial and industrial or scientific know-how.
 Under the Azerbaijan treaty, a 10% rate applies to the royalties described in the first two bullets above, while a 5% rate applies to the royalties described in the third bullet.
- (pp) The tax treaty with the United Arab Emirates has been extended for two years, until 9 August 2008. The treaty entered into effect in 1996 for a period of 10 years. A further extension of the existing treaty is unlikely from a German point of view.

Germany has signed new tax treaties with Kyrgyzstan, Macedonia, Papua New Guinea, Slovenia and the United States. It has initialed new tax treaties with Australia, Ghana, Greece, Malaysia, Oman and South Africa. Germany is negotiating or renegotiating tax treaties with Chile, Costa Rica, Cuba, the Czech Republic, Georgia, Iceland, Lebanon, the Netherlands, Philippines, Saudi Arabia, the Slovak Republic, Syria, Thailand, Turkmenistan, the United Arab Emirates and Venezuela.

# GHANA

(Country Code 233)

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## A. At a Glance

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	5
Branch Tax Rate (%)	25
Withholding Tax (%) (a)	
Dividends	8 (b)
Interest	10 (c)
Royalties	10 (c)
Management and Technology Transfer Fees	15 (c)
Directors' Fees	10
Technical Service Fees	15 (c)
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0 (d)
Carryforward	5 (e)

- (a) Applicable to payments to residents and nonresidents.  
 (b) This is a final tax for both residents and nonresidents without a permanent establishment in Ghana.  
 (c) This is a final tax for nonresidents without a permanent establishment in Ghana only.  
 (d) Losses incurred on completion of long-term contracts may be carried back to prior tax years.  
 (e) This applies to enterprises engaged in agro-processing, tourism, information and communication technology, mining, farming or manufacturing. For this purpose, a tourism enterprise is the operator of a tourism business registered with the Ghana Tourist Board, an information and communication technology

business is a business that is engaged in software development, and a manufacturing business is a business that manufactures primarily for export. In addition, losses incurred by venture capital financing companies on the disposal of shares invested in venture capital subsidiary companies under Act 684 and losses incurred by qualifying venture capital financing companies on shares in any venture may be carried forward for five years after the disposal of the shares.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are subject to tax on their income accruing in or derived from Ghana and on their income brought into or received in Ghana. A company is resident in Ghana if it is incorporated under the laws of Ghana or if its management and control are exercised in Ghana. Nonresident companies are subject to tax only on their income accruing in or derived from Ghana.

**Rates of Corporate Tax.** The standard corporate income tax rate is 25%.

Income derived from nontraditional exports is taxed at a rate of 8%. Income derived by banks from loans granted to farming enterprises is subject to tax at a rate of 20%. The rate of tax applicable to income derived by financial institutions from loans to leasing companies is 20%.

Rural or community banks are subject to tax at a rate of 8% after their period of exemption.

For petroleum companies, the tax rate is 50%, but the law allows a different rate, or a special tax regime, to be negotiated with the government in petroleum agreements. After a company has recovered all outlays from an oil field plus a specified rate of return after deduction of tax, royalties and an inflation adjustment, the government may negotiate for an additional share of the crude oil profits.

*Tax Incentives.* Ghana offers tax exemptions and tax reductions to companies engaged in specified industrial activities.

Income derived by companies from the business of constructing residential premises for leasing or sale is exempt from tax for a period of five tax years (years of assessment). The tax-exemption period begins with the tax year in which the company begins its operations. If the company's accounting year differs from the calendar year, the beginning of the tax-exemption period is the tax year in which the accounting period of the first year of operations begins.

Rural banks are exempt from tax for their first 10 years of operation.

The income of a venture capital financing company is exempt for 10 years if the company satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act. The tax-exemption period begins with the tax year in which the company's operations begin.

Cocoa farmers are exempt from tax on income derived from cocoa. Cattle ranchers are exempt from tax for the first 10 tax years. Income derived from tree crops, such as coffee, palm oil, shea

butter, rubber and coconut, is exempt from tax for 10 years following the first harvest. For a company's first five years of operation, income derived from poultry, fishing and cash crops, such as maize, rice, pineapple, cassava and yams, is exempt from tax.

Income of a company from an agro-processing business established in Ghana in or after the tax year beginning 1 January 2004 is exempt from tax for a period of five tax years. The tax-exemption period begins with the tax year in which the company begins commercial production. If the company's accounting year differs from the calendar year, the beginning of the tax-exemption period is the tax year in which the accounting period of the first year of production begins.

Income of a company that commercially produces cocoa by-products derived from substandard cocoa beans, cocoa husks and other cocoa waste as the principal raw materials is exempt from tax for a period of five tax years. The tax-exemption period begins with the tax year in which the company begins commercial production. If the company's accounting year differs from the calendar year, the beginning of the tax-exemption period is the tax year in which the accounting period of the first year of production begins.

The companies described in the preceding two paragraphs are also subject to a reduced tax rate after the five-year tax holiday ends. The reduced rate varies according to the location of the business, as described in the following table.

Location	Rate (%)
Accra and Tema	0
All other regional capitals	75
Outside regional capitals	50

The income of a company whose principal activity is the processing of waste, including recycling of plastic and polythene material for agricultural or commercial purposes, is exempt from tax for a period of seven tax years. The tax-exemption period begins with the tax year in which the company begins its operations. If the company's accounting year differs from the calendar year, the beginning of the tax-exemption period is the tax year in which the accounting period of the first year of operations begins.

Nonresident companies engaged in air and sea transportation are exempt from tax, if the Commissioner of the Internal Revenue Service (IRS) is satisfied that the same types of companies resident in Ghana are granted an equivalent exemption by the nonresident company's country of residence.

Manufacturing enterprises other than those engaged in agro processing and the production of cocoa by-products, as described above, located in regional capitals other than Accra and Tema are entitled to a 25% income tax rebate, while manufacturing enterprises located outside regional capitals are entitled to a 50% tax rebate.

**Capital Gains.** Capital gains on chargeable assets are subject to tax at a rate of 5%. Capital losses do not offset capital gains.

Capital gains tax is imposed on gains derived from the disposal of the following assets:

- Buildings.
- Businesses and business assets, including goodwill, but excluding the following: assets acquired in mergers, amalgamations and reorganizations of companies if continuity of underlying ownership in the assets of at least 25% exists; trading stock; and Class 1, 2, 3 and 4 depreciable assets (see Section C).
- Land other than agricultural land.
- Shares other than those publicly traded on the Ghana Stock Exchange.

To calculate capital gains, the cost basis of the asset is deducted from the proceeds received on the disposal of an asset. The cost basis of a chargeable asset is the sum of the following:

- Cost of the asset including incidental costs;
- Expenditure incurred to alter or improve the asset; and
- Expenditure relating or incidental to the disposal of an asset.

Capital gains are exempt from tax if the amount received on the disposal of an asset is wholly used to acquire a similar asset within a year of the disposal or if the gain is less than ₵500,000.

**Administration.** The Internal Revenue Service (IRS) is responsible for the administration and collection of corporate income tax, capital gains tax and gift tax.

The tax year (year of assessment) is the calendar year. If a company's accounting year differs from the calendar year, its basis period for a year of assessment is the accounting year ending within the tax year.

Companies must file their tax returns within four months after the end of their accounting year.

Assessed tax must be paid within 30 days of receipt of notice of assessment from the Commissioner of the IRS. The commissioner may compute a provisional assessment, which is payable in quarterly installments by 31 March, 30 June, 30 September and 31 December of the tax year if the company's accounting year is the calendar year. In general, companies whose accounting year differs from the tax year must make quarterly payments at the end of the third, sixth, ninth and twelfth months of their accounting year.

Companies that fail to pay tax by the due date must pay a penalty in addition to the tax payable. For a failure to pay tax for a period of not more than three months, the penalty equals 10% of the tax payable. For a failure to pay tax for a period exceeding three months, the penalty equals 20% of the tax payable.

**Dividends.** An 8% withholding tax is imposed on dividends paid by resident companies. This is a final tax. Dividends received from nonresident companies are also taxed at a rate of 8%.

**Foreign Tax Relief.** Foreign tax paid on foreign income is allowed as a credit against tax payable with respect to the foreign income received in Ghana. The amount of tax chargeable with respect to the income is reduced by the amount of the credit.

### C. Determination of Trading Income

**General.** Chargeable income is based on the income reported in companies' financial statements, subject to certain adjustments.



To be deductible, expenses must be wholly, exclusively and necessarily incurred in the production of income by the company during the financial year. Expenses that may be deducted include the following:

- Interest;
- Rent;
- Repair of plant, premises, plant, machinery and fixtures;
- Bad debts (see *Provisions* below);
- Research and development expenditure; and
- Foreign exchange losses (see *Foreign-Exchange Gains and Losses* below).

If the Commissioner of the IRS believes that profits reported by a local subsidiary of a nonresident company are unrealistic, the commissioner may compute the entity's profits by applying to the consolidated profits of its group a ratio of the local entity's turnover to the group's worldwide turnover (this is the income-splitting measure of the antiavoidance rules in the income tax law; see Section E).

**Foreign-Exchange Gains and Losses.** Foreign-exchange gains and losses are not taken into account in the tax computation until they are realized. Foreign-exchange gain or loss is realized when the liability under a contract in foreign currency is discharged or when the right to receive foreign currency under a contract is satisfied by actual receipt. No foreign-exchange gains or losses are recognized with respect to transactions engaged in by residents that could reasonably be expected to be conducted in local currency. Foreign-exchange losses of a capital nature may be capitalized and depreciated at a rate of 10% using the declining-balance method. A company may claim a deduction for foreign-exchange losses only if it notifies the Commissioner of the IRS in writing of the existence of the debt claim, debt obligation or foreign-exchange holding on which the loss was incurred. Such notification must be made by the due date for filing the income tax return for the accounting year in which the debt arose or the foreign currency was acquired (for companies whose accounting year differs from the calendar year, the tax year is the year in which their accounting year begins).

If a person enters into separate transactions that result in a foreign-exchange gain and a foreign-exchange loss and if the transaction resulting in the foreign-exchange loss would not have been entered into had the transaction resulting in the foreign-exchange loss not occurred or vice versa, the foreign-exchange loss is deductible only to the extent of the amount of the foreign-exchange gain.

**Inventories.** In general, companies must calculate the cost of trading stock using the absorption-cost method. Stock may be accounted for using the first-in, first-out (FIFO) method or the average-cost method. After a company chooses one of the methods, it must use the method consistently from period to period. A company can change the method only with the written permission of the Commissioner of the IRS.

**Provisions.** Bad debts incurred in business are deductible if the company proves to the satisfaction of the Commissioner of the IRS that the debts have become bad. Provisions for bad and doubtful debts are not permitted by the Tax Act. The company may have the opportunity to prove to the commissioner that the provision made is equivalent to an actual bad debt.

All amounts recovered with respect to bad debts that were deducted must be included in chargeable income for the accounting year of the recovery.

**Capital Allowances (Tax Depreciation).** Capital allowances are granted with respect to depreciable assets. For the purpose of granting capital allowances, depreciable assets are classified into six different classes. Assets in Classes 1 to 4 are placed in a pool, and capital allowances granted with respect to the pool. Capital allowances for Classes 5 and 6 assets are granted for the individual assets. To claim capital allowances, companies must notify the Commissioner of the IRS within one month after putting an asset to use. The table below presents the various classes of assets and details for calculating their capital allowances.

Class	Assets	Rate %	Formula for Calculating Capital Allowances
1	Computers and data handling equipment	40	$(A \times B \times C) \div 365$ (a)
2	Automobiles; buses and minibuses; goods vehicles; construction and earth-moving equipment, heavy general purpose or specialized trucks; trailers and trailer-mounted containers; plant and machinery used in manufacturing; and costs of a capital nature with respect to long-term crop planting costs	30	$(A \times B \times C) \div 365$ (a)
3	Mineral and petroleum exploration and production rights; mineral and petroleum prospecting, exploration and development costs; buildings, structures and works of a permanent nature used with respect to the assets in this category described above that are likely to be of little or no value when the rights are exhausted or the prospecting, exploration or development ends; and plant and machinery used in mining or petroleum operations	80% of the cost base of assets added to the pool during the basis period and 50% of the balance of the pool, if any	$(A \times B \times C) \div 365$ (a)(b)

Class	Assets	Rate %	Formula for Calculating Capital Allowances
4	Railroad cars, locomotives and equipment; vessels barges, tugs, and similar water transportation equipment; aircraft; specialized public utility plant, equipment, and machinery; office furniture, fixtures and, equipment; and any depreciable asset not included in another class;	20	$(A \times B \times C) \div 365$ (a)
5	Buildings, structures and works of a permanent nature other than those included in Class 3	10	$(A \times B \times C) \div 365$ (c)(d)
6	Intangible assets other than those included in Class 3	– (e)	$[(A \div D) \times C] \div 365$ (d)(f)

- (a) A is the written-down value of the pool at the end of a basis period, B is the depreciation rate applicable to the pool, and C is the number of days in the period.
- (b) The formula is the same as for Classes 1 and 2, except that for Class 3 assets, 5% of the cost basis of assets purchased in the year is added back to the pool at the end of the period to determine the written-down value.
- (c) A is the cost base of the asset, B is the depreciation rate, and C is the number of days in the basis period.
- (d) The total amount of capital allowances granted for a Class 5 or 6 asset may not exceed the cost basis of the asset.
- (e) The rate is determined by formula.
- (f) A is the cost base of the asset, C is the number of days in the basis period, and D is the useful life of the asset in whole years calculated at the time the asset is acquired.

**Relief for Losses.** Enterprises engaged in mining, farming, agro-processing, tourism, information and communication technology or manufacturing business may carry forward their losses for five years. For this purpose, a tourism enterprise is the operator of a tourism business registered with the Ghana Tourist Board, an information technology business is an ICT business that is engaged in software development, and a manufacturing business is a business that manufactures primarily for export. In addition, losses incurred by venture capital financing companies on the disposal of shares invested in venture capital subsidiary companies under Act 684 and losses incurred by qualifying venture capital financing companies on shares in any venture may be carried forward for five years after the disposal of the shares.

**Groups of Companies.** Each company must file a separate tax return. There is no provision for offsetting losses against profits within a group of companies.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, imposed on all supplies of goods and services made in, or imported into, Ghana, except for exempt items	12.5
National Health Insurance levy; imposed on all goods and services, except those that are specifically exempt	2.5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The currency in Ghana is the cedi (¢).

The Exchange Control Act 1961 governs foreign-exchange controls in Ghana, but the Bank of Ghana exercises much discretion in administering the act. For example, contrary to the law, the central bank has permitted the operation of foreign-exchange bureaus.

**Antiavoidance Legislation.** A company must obtain a tax-clearance certificate to engage in certain transactions, including the purchase of goods in commercial quantities from producers, distributors, manufacturers or importers. The income tax law contains the following three specific antiavoidance measures: income splitting (see Section C); transfer pricing (see *Transfer Pricing* below) and thin capitalization (exempt-debt to exempt-equity ratio; see *Debt-to-Equity Ratio* below).

**Transfer Pricing.** If the Commissioner of the IRS determines that a transaction between two related companies is artificial and fictitious and is carried out to reduce the tax of either company, the commissioner may adjust the transaction for tax purposes to ensure that the proper amount of tax is paid.

**Debt-to-Equity Ratio.** If an “exempt-controlled resident entity,” other than a financial institution, has an “exempt debt” to “exempt equity” ratio in excess of 2:1, no deduction is allowed for interest paid or a foreign-exchange loss incurred on the portion of the debt that exceeds the 2:1 ratio. Broadly, an “exempt-controlled resident entity” is a resident entity of which at least 50% of its underlying ownership or control is held by an “exempt person,” which is a nonresident person or a resident person meeting certain criteria. The law also provides detailed definitions of “exempt debt” and “exempt equity.”

## F. Treaty Withholding Tax Rates

The following are the maximum withholding rates under Ghana’s double tax treaties for dividends, interest, royalties, and management and technology transfer fees.

	Dividends %	Interest %	Royalties and Management and Technology Transfer Fees %
Denmark*	8	10	15
France	8	10	15
Gambia*	8	10	15
Germany	8	10	15
Netherlands	8	10	15
Nigeria*	8	10	15
Sierra Leone*	8	10	15

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties and Management and Technology Transfer Fees</b>
	<b>%</b>	<b>%</b>	<b>%</b>
South Africa	8	10	15
Sweden*	8	10	15
United Kingdom	8	10	15
Nontreaty countries	8	10	15

\* These treaties were signed prior to the country's independence in March 1957, but Ghana considers them still to be in force.

## GREECE

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**A. At a Glance**

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	0 (a)
Interest	
Bank Interest	10 (b)
Interest on Treasury Bills and Corporate Bonds	10 (b)(c)
Repos and Reverse Repos	10 (b)
Other Interest	
Paid to Greek Legal Entities	20
Paid to Foreign Legal Entities	25 (d)
Royalties from Patents, Know-how, etc.	20 (d)
Services	20 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) Greek corporations pay dividends out of after-tax net profits. No further tax is payable on dividends by the corporation or its shareholders.
- (b) This tax is final for individuals. However, for banks, final taxation is deferred.
- (c) This withholding tax is imposed principally on payments to residents.
- (d) The withholding tax is subject to rates under applicable double tax treaties.
- (e) This withholding tax applies to fees paid to foreign entities from nontreaty countries that do not have a permanent establishment in Greece for services rendered in Greece. It is a final tax.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Greek companies are taxed on their worldwide income. Foreign business enterprises are taxed only on income derived from a permanent establishment in Greece or on profits generated in Greece. A corporation (*anonymos eteria*, or AE; in certain countries, a corporation is referred to as a *société anonyme*, or SA) or limited liability company (*eteria periorismenis efthinis*, or EPE) is Greek if its corporate seat or effective management is located in Greece.

**Rates of Corporate Income Tax.** The standard corporate tax rate is 25%.

An additional 3% tax is imposed on gross real estate income. However, the amount of this tax cannot exceed the amount of the standard income tax. For purposes of the 3% tax, “real estate income” is income from the renting, subleasing, self-use and right to use for free, real estate. Income from self-use and from the right to use for free is calculated under a specified method.

Partnerships are taxed at a rate of 20%.

**Capital Gains.** Capital gains derived from disposals of fixed assets are treated as business income and are subject to income tax at the corporate tax rate. To calculate the capital gains derived from disposals of land and buildings, the sale price cannot be lower than the “objective value,” which is computed based on predetermined coefficients used by the tax authorities.

Gains derived from transfers of business-related rights, such as leasing or subleasing rights or the right to a patent or a trademark,

are taxed up front (before the conclusion of the respective contract) at a rate of 20%. This tax is also considered a prepayment of the annual corporate income tax. As a result, the tax may be offset or refunded, depending on the circumstances.

Gains derived from the transfer of a business as a going concern and gains derived from the transfer of a participation (interest) in a limited liability company or partnership are also taxed upfront at a rate of 20%. In both cases, the sales price cannot be lower than the fair market value calculated according to a formula provided by the law. The tax is also considered to be a prepayment of the annual corporate income tax.

A 5% "income" tax is imposed on the sales price of shares not listed on a recognized stock exchange that are sold by Greek shareholders, as well as on the sales price of Greek unlisted shares sold by foreigners. The minimum sales price is the fair market value, which is determined according to rules prescribed by the Ministry of Finance. Capital gains derived from such sales by Greek companies are subject to the standard corporate tax rate with a credit for the 5% tax already paid.

Capital gains derived from sales of shares listed on a recognized stock exchange by enterprises maintaining a full set of double-entry accounting books (these enterprises include all Greek corporations and limited liability companies, foreign companies' branches and other large entities) are exempt from tax, provided the gains are transferred to a special reserve that may be used only for offsetting losses from sales or revaluations of securities. The amount of this special reserve is taxed if it is distributed or capitalized. Losses in excess of the special reserve may not be claimed as deductions from taxable income, but should be carried forward to be offset against future gains derived from sales of listed shares.

Transactions on the Athens Stock Exchange or on a foreign stock exchange are subject to transfer tax at the rate of 0.15% on the sales proceeds received for the shares.

**Administration.** The tax year is the calendar year. If a company adopts an accounting period that deviates from the calendar year, tax is assessed for the taxable income in the accounting period ending within the calendar year. Greek AEs and EPEs, and branches of foreign companies, must file an annual corporate tax return during the fifth month after the end of their accounting year.

In general, on filing their annual corporate tax return, legal entities must make an advance payment against the next year's income tax liability. Such advance payment equals the amount calculated by applying a rate of 65% (80% for banks) to the income tax due for the year for which the return is filed. The final payment of tax is calculated by subtracting the advance payment made in the preceding year and other prepayments of tax (including taxes withheld at source) and foreign taxes paid on foreign source income from the amount of tax due. The foreign tax credit cannot exceed the amount of Greek tax otherwise payable on the foreign-source income.

The total of the annual income tax and the advance payment may be paid in eight equal installments. The first installment is paid at the time of filing the tax return.

Late income tax payments are generally subject to interest at a rate of 1% per month capped at 100% of main tax due (the amount of income tax that corresponds to the item disallowed). In addition, for misreported or nonreported income, late payment interest is imposed at rates of 2% and 2.5% per month respectively, capped at 200% of the main tax due. Late payment interest imposed during tax inspections may be reduced by  $\frac{2}{5}$  to  $\frac{3}{5}$  if the inspection results in a settlement.

**Dividends.** Dividends distributed by Greek companies to Greek or foreign shareholders are not subject to tax. Foreign dividends received by Greek beneficiaries are subject to corporate income tax. A 20% tax is withheld by intermediary banks from remittances of dividends distributed by non-European Union (EU) companies. This tax may be offset against the final tax liability.

**Foreign Tax Credit.** Foreign-source income is usually taxable with a credit for foreign income taxes paid, up to the amount of Greek tax corresponding to the foreign-source income.

Law 2578/1998 implemented the EU Parent-Subsidiary Directive (90/435/EEC) in Greece. Under the Parent-Subsidiary Directive, qualifying Greek parent companies may claim a tax credit equal to the sum of the following: the amount of corporate tax paid by their subsidiaries or second-tier subsidiaries located in other EU countries corresponding to the profits distributed to them; and any tax withheld from the dividends distributed. The credit cannot exceed the amount of Greek tax payable on the same income. Dividends covered by the measure described above are not subject to the 20% tax that is otherwise withheld by intermediary banks from remittances to Greek parent companies. The same foreign tax credit is also available with respect to dividends received from non-EU subsidiaries.

### C. Determination of Trading Income

**General.** Taxable income for all legal entities consists of annual gross income, less allowable deductions. In principle, expenses may be deducted only from gross income of the fiscal year in which they are incurred.

In general, all ordinary business expenses and specific items mentioned in the tax law may be deducted for tax purposes, including the following:

- Certain taxes paid, including stamp duty, real estate transfer tax and capital duty (see Section D).
- Interest accrued, except interest and penalties on overdue payment of taxes.
- Preoperating expenses and expenses for acquiring real estate, which may be written off either in a lump sum or in equal installments over a period of five years.
- Repair and maintenance costs on leasehold property in the accounting year incurred.
- Financial lease payments with respect to real estate, which are deductible to the extent they correspond to the value of the buildings leased. The portion of lease payments corresponding to the value of land is not deductible.
- Donations and sponsorships if certain conditions are met.



- Technical assistance fees, royalties for patents, trademarks and similar items, and management fees. Effective from 1 January 2008, payments exceeding a certain threshold require preapproval by a special auditing committee established by law.
- Bad debt provisions (see *Provisions* below).
- Car expenses (limits apply depending on the engine horse power).

Subject to the provisions of applicable double tax treaties, branches of foreign companies may deduct an allocated portion of the operating costs incurred by their head offices abroad. Such portion may not exceed 5% of the branches' general administrative expenses incurred in Greece.

Companies may claim an additional deduction from the annual profits equal to 50% of research and development (R&D) expenses incurred between 1 January 2005 and 31 December 2008 if such expenses exceed the average rate of similar expenses incurred during the previous two fiscal years. This deduction is allowed in addition to the normal deduction for the entire amount of such expenses.

If a company wants to deduct an expense that is not explicitly deductible under the law, it may seek preapproval from the Ministry of Finance under a special procedure.

**Inventories.** Stock is valued at the lower of acquisition cost and current market value. Any cost method is acceptable, provided that it is maintained consistently. To change a cost method, an enterprise must usually follow a special procedure.

### Provisions

*Bad Debt.* Companies may establish tax-deductible provisions for potential bad debts. The maximum amount that may be allocated to such a provision is the lower of 0.5% of the company's total sales or 30% of the balance of the account "Customers" for each fiscal year. Under an exception, if the amount of the existing bad debts in the fiscal year for which all legal remedies have already been exhausted exceeds the amount in the provision, the excess can be fully deducted in that fiscal year.

*Employees' Termination Indemnity.* A provision for employees' termination indemnity is deductible to the extent it applies to employees expected to retire within the following year.

**Depreciation.** Depreciation is generally calculated using the straight-line method. For new machinery and equipment acquired by industrial and mining companies on or after 1 January 1998, depreciation may be calculated using either the straight-line or declining-balance method, provided that the method selected is applied consistently.

The tax law provides low and high depreciation rates for each category of assets. A company may select the high rate, the low rate or any rate in between these rates. The following are the prescribed low and high straight-line rates of depreciation for certain assets.

Asset	Low Rate (%)	High Rate (%)
Buildings and construction	5	8
Office equipment	15	20
Motor vehicles	11	15

For the three accounting periods following the year in which a new company begins its operations, it may elect to either not depreciate all of its fixed assets or apply the statutory depreciation rates reduced by 50%, provided that the method selected is applied consistently.

Leasehold additions and improvements are depreciated over the lease term or the period prescribed by law (that is, at the range of rates provided in the law for the relevant asset), whichever results in a higher rate.

Fixed assets valued up to €1,200 may be expensed in the year acquired or placed in service.

Expenditure incurred to acquire computer hardware and software may be fully deducted in the year in which such items are placed in service.

**Relief for Losses.** Losses may be carried forward for a five-year period if certain conditions are met. Losses may not be carried back.

**Groups of Companies.** Each company forming part of a group must file a separate return. The law does not provide for consolidated tax returns or other group relief.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT)	
Standard rate	19
Reduced rate	9
Special rates	3/4.5/6/13
Stamp duty on private loan agreements	2.4/3.6
Capital duty	1
Annual real estate tax; imposed on the value of real estate owned by legal entities	0.1/0.6
Special property tax; imposed on the "objective" value of real estate property; the tax does not apply if the company has registered shares or if it discloses its corporate structure and the ultimate individual (natural person) shareholders or partners are revealed	3
Real estate transfer tax; imposed on taxable value	
First €15,000 of taxable value	9
Taxable value in excess of €15,000	11
(Under Greek Tax Law 3427/2005, VAT may be imposed on transfers of buildings. For VAT purposes, buildings are classified as "old" or "newly constructed," depending on the date of issuance of the respective construction license. Buildings constructed on the basis of a license issued on or after 1 January 2006 qualify as "newly constructed," while buildings with a license issued on or before 31 December 2005	

Nature of Tax	Rate (%)
<p>are classified as “old”. Buildings with a construction license issued on or before 31 December 2005 but revised on or after 1 January 2006 are also classified as “newly constructed,” if the construction work does not take place until on or after 1 January 2006. The first transfer of “old” buildings taking place on or after 1 January 2006 is subject to real estate transfer tax, instead of VAT. The first transfer of “newly constructed” buildings [that is, a transfer taking place before the first occupation or use] is subject to VAT at a rate of 19%. The taxable value is the higher of the following: contract price; objective value; and the budgeted construction cost [if the transfer of the relevant building takes place before completion] or the actual construction cost [if the transfer of the relevant building takes place after completion of the building]. Any subsequent transfers are subject to transaction duty at a rate of 1%.)</p>	

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** No controls are imposed on the transfer of money in and out of Greece. However, specific reporting requirements for certain transactions must be met.

**Transfer Pricing.** Under measures in Greek law, if the transaction prices between related parties differ from the prices that would prevail in an arm’s length transaction, the difference between the transfer prices and the prevailing market prices is treated as the profit of the company that had its revenues decreased or its expenses increased as a result of the transfer-pricing practice. It is not possible to reach transfer-pricing agreements in advance with the tax authorities. In general, the transfer-pricing legislation in Greece is rather preliminary. Greece has not yet introduced transfer-pricing documentation rules or officially adopted the EU Council resolution on the Transfer Pricing Code of Conduct.

**Debt-to-Equity Rules.** No thin-capitalization rules apply in Greece. However, under the Company Law in Greece, the net equity of a corporation may not be less than  $\frac{1}{2}$  of the paid-in-share capital. The Company Law provides that if the net equity falls below  $\frac{1}{2}$  of the capital, the company must adopt immediate measures to restore such ratio.

**Controlled Foreign Corporations.** Greece has not yet implemented controlled foreign company (CFC) rules.

**Mergers and Acquisitions.** The Company Law regulates mergers and acquisitions in Greece. However, under specific tax incentive legislation (Laws 1297/1972 and 2166/1993), significant tax exemptions and relief for company restructurings may be available.

**Law 89/1967 Regime.** Enterprises licensed to operate under the Law 89/1967 regime may enter into a favorable Advance Pricing Arrangement (APA) with the tax authorities. A license may be

granted to enterprises under this regime if certain conditions are met. The principal condition is that the company must be exclusively engaged in the provision of specific services to foreign associated companies, the foreign head office or foreign branches. The Ministry of National Economy and Finance grants the license after reviewing and approving the applicant's transfer-pricing study (based on the cost-plus method).

## F. Treaty Withholding Tax Rates

Under most double tax treaties, the rates in the table below apply to the extent that the amount of interest or royalties is at arm's length. The domestic withholding tax rates apply to any excess amounts. In addition, certain recent double tax treaties include an antiabuse clause.

Greece has implemented EU Directive 2003/49/EC. Under this directive, withholding tax on interest and royalties paid between associated companies of different EU member states will be abolished, effective from 1 July 2013. During the transitional period, the withholding tax rate will be 10% until 2009 and 5% until 2013.

Dividends are not subject to withholding tax under Greek domestic law. Consequently, the following table provides treaty withholding tax rates for interest and royalties only.

	<b>Interest</b>	<b>Royalties</b>
	%	%
Albania	5	5
Armenia	10	5
Austria	0 (d)	0 (d)
Belgium	10 (l)	5
Bulgaria	10	10
China	10 (l)	10
Croatia	10	10
Cyprus	10	0 (e)
Czechoslovakia (i)	10	10
Denmark	8	5
Egypt	15	15
Finland	10	10
France	10	5
Georgia	8	5
Germany	10	0
Hungary	10	0
India	25	20
Israel	10	10
Italy	10	5 (g)
Korea	8	10
Kuwait	5	15
Lithuania	10	10 (a)
Luxembourg	8	7 (h)
Mexico	10	10
Moldova	10	8
Netherlands	10 (f)	7 (h)
Norway	10	10
Poland	10	10
Portugal	15	10
Romania	10	7 (h)
Russian Federation	7	7

	<b>Interest</b>	<b>Royalties</b>
	%	%
Slovenia	10	10
South Africa	8 (j)	7 (k)
Spain	8	6
Sweden	10	5
Switzerland	10	5
Turkey	12	10
Ukraine	10	10
United Kingdom	0	0 (a)
United States	0 (b)	0
Uzbekistan	10	8
Nontreaty countries (c)	25	20

- (a) The rate is 5% for royalties paid for the use of industrial, commercial or scientific equipment.
- (b) The 0% rate applies if the recipient does not control directly or indirectly more than 50% of the voting power in the payer. However, the 0% rate does not apply to interest paid to U.S. recipients at an annual rate exceeding 9%.
- (c) For details, see Section A.
- (d) Under the treaty, the general withholding tax rate is 0% for interest and royalties. The treaty withholding tax rate is 10% if the recipient is a company that owns more than 50% of the payer corporation. The refund system applies under the treaty. As a result, the Greek payer must withhold tax at the general rate under the domestic tax law (25% for 2007) and the beneficiary may apply for a tax refund.
- (e) The rate is 5% for film royalties.
- (f) The rate is 8% if the recipient is a bank or similar entity.
- (g) The rate is 0% for copyright royalties for literary, artistic or scientific works, including films.
- (h) The rate is 5% for copyright royalties for literary, artistic or scientific works, including films.
- (i) Greece honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (j) The rate is 0% for interest paid to the South Africa Reserve Bank.
- (k) The rate is 5% for royalties paid for literary, artistic or scientific works, including films.
- (l) The rate is 5% if the recipient is a bank. Under the China treaty, the rate is 0% if the recipient is a government bank.

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(Country Code 1)

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**A. At a Glance**

Corporate Income Tax Rate (%)	35
Capital Gains Tax Rate (%)	35
Branch Tax Rate (%)	35
Withholding Tax (%) (a)	
Dividends	30 (b)
Interest	30 (b)(c)
Royalties from Patents, Know-how, etc.	30 (b)
Branch Profits Tax	30 (d)
Net Operating Losses (Years)	
Carryback	2
Carryforward	20

- (a) The withholding tax rates may be reduced under tax treaties (see Section E).
- (b) Imposed on payments to nonresidents.
- (c) Interest on certain portfolio debt obligations issued after 18 July 1984 and bank deposit interest not effectively connected to a trade or business in Guam are exempt from withholding.
- (d) The branch profits tax is imposed on the earnings of a foreign corporation attributable to its branch, reduced by earnings reinvested in the branch and increased by withdrawals of previously reinvested earnings.

**B. Taxes on Corporate Income and Gains**

The system of corporate income taxation in force in Guam, a territory of the United States, is a mirror image of the U.S. income tax system. The applicable law is the U.S. Internal Revenue Code, with "Guam" substituted for all references to the "United States." Therefore, for a description of the income taxation of corporations resident or doing business in Guam, refer to the sections on the United States and substitute "Guam" for each reference to the "United States."

Income taxes are paid to the government of Guam, which administers its tax system.

Under an agreement between the United States and Guam, Guam had the authority to separate its system of taxation from the U.S. Internal Revenue Code, effective 1 January 1991. Because a comprehensive Guam Tax Code has not yet been developed, this date has been extended, and the mirror system of taxation continues to apply to Guam until a new code goes into effect. A Guam Tax Code Commission has been formed and has begun work on the new law.

The government of Guam, through the Guam Economic Development Authority, is authorized by law to allow tax rebates to qualified investors. Qualifying Certificates (QCs) for tax incentives are granted based on the investment commitment as well as on the potential for creating new employment and expanding the base of the island's industry. These incentives are aimed primarily at manufacturers, insurance companies, trusts, commercial fishing companies, corporate headquarters, specialized medical facilities, high-technology companies, agricultural enterprises and tourism-development companies. In general, the tax rebates can amount to up to 75% of income tax paid for up to 20 years. Certain insurance companies may qualify for a 100% income tax rebate.

### C. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Gross receipts tax, on sales of tangible personal property and services, excluding wholesale activities	4%
Use tax, on goods imported into and consumed in Guam (businesses are subject to either gross receipts tax or use tax, not both)	4%
Hotel occupancy tax	11%
Real property tax, on appraised value of	
Land	0.0875%
Improvements	0.35%
Liquid fuel taxes, imposed per gallon	
Aviation	4 cents
Diesel	14 cents
Other	15 cents
Alcoholic beverage excise tax	
Malted fermented beverages	7 cents per ounce
Distilled beverages	\$18 per gallon
Vinous beverages	\$4.95 per gallon
Tobacco excise tax	
Cigarettes	\$5 per 100 cigarettes
Cigars	20 to 25 cents per cigar
Other tobacco products	\$3.50 per pound
Documents tax, on conveyances and on mortgages of real property	0.1%
Social security contributions (U.S. system), imposed on	
Wages up to \$102,000 (for 2008); paid by	
Employer	7.65%
Employee	7.65%
Wages in excess of \$102,000 (for 2008); paid by	
Employer	1.45%
Employee	1.45%
Miscellaneous license fees	Various

### D. Miscellaneous Matters

**Foreign-Exchange Controls.** Guam does not impose foreign-exchange controls.

**Debt-to-Equity Rules.** The U.S. thin-capitalization rules apply in Guam.

**Transfer Pricing.** The U.S. transfer-pricing rules apply in Guam.

### E. Tax Treaties

The Guam Foreign Investment Equity Act was signed into law on 24 August 2002 and amends the Organic Act of Guam with respect to the application of the Guam territorial income tax laws. The Guam Foreign Investment Equity Act provides that the tax rate under Sections 871, 881, 884, 1441, 1442, 1443, 1445 and 1446 of the U.S. Internal Revenue Code of 1986, on any item of income

from sources in Guam is the same as the rate that would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. However, this provision does not apply to determine the tax rate on any item of income received from a Guam payer, if for any tax year, the tax on the Guam payer was rebated under Guam law (see Section B for a discussion of the QC rebates).

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(Country Code 502)

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**A. At a Glance**

Corporate Income Tax Rate (%) (a)	
General Tax Regime	5
Optional Tax Regime	31
Capital Gains Tax Rate (%) (a)	
General Tax Regime	10
Optional Tax Regime	31
Branch Tax Rate (%) (a)	
General Tax Regime	5
Optional Tax Regime	31
Withholding Tax (%) (b)	
Dividends	0 (c)
Interest	10 (d)
Royalties	31
Payments for Scientific, Technical and Financial Advice	31
Commissions	10
Fees	31
Transportation	5
Salaries	10
Insurance and Reinsurance	31 (e)
News Services, Videos and Films	9.3 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	0

- (a) For details regarding the General Tax Regime and the Optional Tax Regime see Section B.
- (b) The withholding taxes apply to nonresidents.
- (c) A final withholding tax at a rate of 10% is imposed on dividends paid to nonresidents if the payer has not paid income tax in accordance with the law.
- (d) For details regarding the withholding tax on interest, see Section B.
- (e) The effective tax rate for nonresident insurance and reinsurance companies is 3.1% (31% rate imposed on a deemed taxable income equal to 10% of gross income.)
- (f) The nominal withholding tax rate is 31%, which is applied to deemed taxable income equal to 30% of gross income. As a result, the effective tax rate is 9.3%.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** The Guatemalan income tax system is based on the territorial principle. As a result, only income derived from Guatemalan sources is subject to income tax. Foreign-source income is not taxable.

**Corporate Income Tax Rates.** Companies are taxed under either the General Tax Regime or the Optional Tax Regime.

Under the General Tax Regime, companies are subject to tax at a rate of 5% on taxable income. Taxable income is defined as the difference between gross income and exempt income. Consequently, unless the income is exempt, companies are subject to a 5% final withholding tax on their gross income. No deductions are allowed. If the 5% withholding tax is not applied, the tax must be paid directly to the tax authorities.

Alternatively, companies may elect the Optional Tax Regime. Under this regime, companies may deduct expenses incurred to generate taxable income or to preserve the source of such income. The taxable income is subject to tax at a rate of 31%.

Companies operating under either the Drawback Regime or the Free-Trade Zone Regime benefit from a 100% income tax exemption for income earned from export activities for a period of 5 or 10 years, depending on the type of activity (for example, commercial or manufacturing). Based on World Trade Organization (WTO) agreements, the exemption is expected to expire on 31 December 2015.

**Capital Gains.** Capital gains are taxed at a rate of 10% under the General Tax Regime. Under the Optional Tax Regime, capital gains are taxed at a rate of 31%. Capital losses may be carried forward for five years to offset future capital gains.

**Administration.** The statutory tax year runs from 1 January through 31 December. All companies must file an annual income tax return and make any payment due within three months after the end of the tax year. Interest and penalty charges are imposed for late payments of tax.

Companies operating under the General Tax Regime must file monthly withholding tax returns and pay the 5% income tax if a withholding was not effectively made on payment of the income. The tax return must be filed within the first 10 business days of the month following the month in which the tax was generated.

Under the Optional Tax Regime, companies must make quarterly advance income tax payments, which are credited against the final income tax liability.

**Dividends.** Dividends received by residents and nonresidents from resident companies are exempt from tax if the distributing company has paid income tax at the corporate level on the distributed income. For dividends paid to nonresidents, a 10% withholding tax is imposed if the distributing company did not pay income tax at the corporate level.

**Interest.** In general, a 10% final withholding tax is imposed on interest paid to nonresidents. However, withholding tax is not imposed on interest payments if all of the following conditions are satisfied:

- The payments are made to a first order financial or banking institution registered as such in its country of origin;
- Proceeds of the loan are used to generate taxable income; and
- The funds are negotiated by banks or financial institutions legally authorized to operate in Guatemala.

The Financial Products Tax is a 10% final withholding tax imposed on interest paid or credited, including interest on savings accounts or investments, to residents who are not subject to the supervision of the Guatemalan Bank Superintendent.

**Foreign Tax Relief.** Guatemala does not grant relief for foreign taxes paid.

### **C. Determination of Trading Income**

**General.** Under the Optional Tax Regime, expenses incurred to generate taxable income, including local taxes, other than income tax and value-added tax, are deductible. All expenses must be documented. Documents issued abroad that support the deduction of the expenses may be subject to a 3% stamp tax.

In general, payments over GTQ 50,000 (approximately US\$6,500) must be made through a banking or financial institution. Otherwise, the transaction and payment instructions must be documented through a public deed. The corresponding bank statement or the public deed satisfies the supporting documentation requirements for the deductibility of payments for income tax purposes.

After the first year of incorporation, deductible expenses are limited to 97% of taxable income. Any expenses incurred in excess of the limit may be carried forward to the following tax year only. Companies with net operating losses for two consecutive tax years, or with a gross margin lower than 4% of taxable income, are not subject to the 97% limit.

The deduction for payments for financial or technical advice and professional service fees for services rendered from abroad is limited to 1% of the taxpayer's gross income or 15% of the total payroll paid to Guatemalan employees.

Interest is deductible for income tax purposes if all of the following conditions are satisfied:

- The loan is granted by a banking or financial institution;
- The loan's proceeds are used to generate taxable income; and
- The interest rate does not exceed the interest rate applied by the tax authorities in case of noncompliance (annual rate of 18%).

**Inventories.** Inventories are valued at cost. The acquisition cost may be computed using various valuation methods provided in the income tax law. No deviation from these methods is allowed unless previously authorized by the tax authorities.

Cattle may be priced at cost or sales price.

No provisions for deterioration or obsolescence are allowed. The destruction of inventory is considered a deductible expense if it is certified by an inspector from the tax authorities or by a Notary Public.

**Provisions.** Provisions for bad debts of up to 3% of credit-sales balances are deductible. Reserves for severance compensation of up to 8.33% of payroll costs are also deductible.

**Tax Depreciation.** Straight-line depreciation is allowed, subject to the following annual maximum rates.

<b>Asset</b>	<b>Rate (%)</b>
Buildings and leasehold improvements	5
Plantations	15
Furniture, fixtures, ships and railroads	20
Machinery and equipment, vehicles and containers	20
Computer equipment and software	33.33
Tools, porcelain, glassware and certain animals	25
Other items	10

Goodwill can be amortized over a minimum period of 10 years. Other intangible assets may be amortized over a minimum period of five years.

Oil and other natural resources are subject to depletion in accordance with the level of production and the remaining reserves.

**Relief for Losses.** Under the General Tax Regime and Optional Tax Regime, net operating losses cannot offset taxable income in prior or future years.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax	12%
Levies on petroleum production and consumption; rate varies by type of fuel	US\$0.17 to US\$0.62 per gallon
Land tax; imposed annually on value of land; maximum rate, applicable to value in excess of GTQ 70,000 (approximately, US\$9,150)	0.9%
Revaluation tax; imposed on the increase in value resulting from a revaluation of immovable property and other fixed assets by an authorized third-party adjuster; for immovable property, the increase in value must be registered with the tax authorities; otherwise the increase in value is subject to income tax	
Immovable property	0%
Other fixed assets	10%
Import duties	0% to 20%
Social security tax; imposed on wages; paid by	
Employer	12.67%
Employee	4.83%
Temporary Tax in Support of the Peace Agreements (IETAAP); imposed only on legal entities subject to the Optional Tax Regime; tax rate applied to the higher of 1/4 of net assets or 1/4 of gross income (IETAAP is scheduled to expire on 31 December 2007. However, at the time of writing, Congress was discussing an extension of the tax to the 2008 fiscal year or the introduction of a new tax on assets to replace IETAAP.)	1%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The currency in Guatemala is the quetzal (GTQ). As of 30 September 2007, the exchange rate was GTQ 7.75 = US\$1. Guatemala does not impose foreign-exchange controls. The exchange system is regulated through the banks.

**Debt-to-Equity Rules.** Guatemala does not impose any debt-to-equity requirements.

**Antiavoidance Legislation.** The tax law contains general measures to prevent tax fraud and similar conduct.

## F. Tax Treaties

Guatemala has not entered into income tax treaties with any other countries.

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## GUERNSEY, CHANNEL ISLANDS

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*This chapter reflects major changes to the corporate tax regime in Guernsey, which take effect on 1 January 2008. At the time of writing, a large number of practice notes regarding these changes were expected to be introduced, particularly with respect to the new antiavoidance measures. Because of the major tax changes and the expected issuance of the practice notes, readers should obtain updated information before engaging in transactions.*

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## A. At a Glance

Corporate Income Tax Rate (%)	0 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0 (a)
Withholding Tax (%)	
Dividends	0 (b)
Interest	0
Royalties	0
Branch Remittance Tax	0

## Net Operating Losses (Years)

Carryback	1
Carryforward	Unlimited

- (a) This is the general corporate income tax rate, effective from 1 January 2008. For details regarding other rates, see Section B.
- (b) Effective from 1 January 2008, dividend withholding tax is not imposed on dividends paid to foreign shareholders. See Section B. Under new anti-avoidance measures, Guernsey resident individual shareholders are subject to withholding tax on dividends received and on deemed distributions.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** A Guernsey resident company is subject to income tax on its worldwide income. A company not resident in Guernsey is subject to Guernsey income tax on its Guernsey-source income (other than bank interest), unless a double tax treaty is applicable. A company is resident in Guernsey if its shareholder control is in Guernsey or if it is registered in Guernsey.

See *Rates of Corporate Income Tax* and subsequent parts of Section B for details regarding the major changes to the corporate tax regime in Guernsey, which are effective from 1 January 2008.

**Rates of Corporate Income Tax.** Significant changes to the corporate tax regime are effective from 1 January 2008.

The general rate of corporate income tax is reduced from 20% to 0%, effective from 1 January 2008. Profits derived by banks from regulated deposit taking activities are taxed at a rate of 10%. Regulated Guernsey utility companies and companies receiving Guernsey property income are subject to tax at a rate of 20%. Also, see *Changes to Comply with European Union Requirements* below.

**Exempt Companies.** Until 31 December 2007, companies registered in Guernsey, but beneficially owned by persons not resident in Guernsey and not carrying on a business in Guernsey, could claim exemption from corporate income tax and withholding tax. Effective from 1 January 2008, the exempt company regime is abolished for all companies, with the exception of collective investment schemes (see *Collective Investment Schemes* below).

Exempt companies pay a fixed annual fee of £600, regardless of their income. Companies registered in other jurisdictions may also be designated as exempt in Guernsey. Holding board meetings or performing administrative functions, such as invoicing, does not constitute carrying on a business. Also, see *Changes to Comply with European Union Requirements* below.

**International Companies.** Effective from 1 January 2008, the International Company (IC) regime is abolished.

**Banking and Insurance Companies.** Effective from 1 January 2008, the general corporate income tax rate of 0% applies to banks and insurance companies, with the exception of profits derived by banks from regulated deposit taking activities, which are taxed at a rate of 10%.

**Collective Investment Schemes.** Collective investment schemes, which are sometimes referred to as unit trusts or investment trusts, form a substantial sector of the finance industry on the island.

These schemes are treated as exempt companies for tax purposes. Collective investment schemes are the only companies that may continue to be treated as exempt companies as of 1 January 2008.

**Protected Cell Companies.** Protected cell companies (PCCs) consist of several cells and core capital. Each cell is liable only to its own creditors. A creditor of a particular cell has recourse to the assets of that cell and the core capital only. PCCs may be used for captive insurance companies, collective investment schemes or other approved enterprises.

**Incorporated Cell Companies.** Incorporated cell companies (ICCs) are similar to PCCs in terms of their cellular nature. However, each cell is regarded as an incorporated entity in its own right and, consequently, is subject to tax as a separate entity.

**Changes to Comply with European Union Requirements.** In response to the proposed European Union (EU) Code of Conduct, Guernsey gave an undertaking to abolish the exempt company, IC and the captive insurance tax regimes, effective from 1 January 2008. The exempt company regime remains in effect only with respect to licensed collective investment schemes. In addition, a 0% rate of corporate income tax applies to most entities in Guernsey, effective from 1 January 2008. Banks are subject to tax at a rate of 10% on income derived from regulated deposit taking activities.

Guernsey resident individuals who own investment companies and trading companies are subject to tax on their attributed shares of the companies' profits. In particular, profits derived by investment companies and investment income of trading companies are imputed to Guernsey shareholders. Final guidance has not yet been issued regarding the implementation of this change and other personal tax changes resulting from the new tax rate measures described above.

Substantial antiavoidance measures are also introduced. Under one of these measures, loans to Guernsey shareholders are regarded as deemed distributions, and tax must be withheld from these distributions at a rate of 20%.

Trading companies must withhold and pay over tax at a rate of 20% on distributions or deemed distributions made to Guernsey resident individual shareholders. The amount subject to tax is based on the proportion of the company's profits chargeable to income tax that are being distributed (that is, the profits calculated under normal corporate income tax principles).

Measures to comply with the EU Savings Directive apply to interest payments made to EU resident individuals only.

**Capital Gains.** Capital gains are not taxable in Guernsey.

**Administration.** The Guernsey tax year corresponds to the calendar year. Tax is normally due in two equal installments on 30 June and 31 December of the tax year. Under the new corporate income tax measures, investment income, dividends paid and deemed distributions for companies with Guernsey resident shareholders must be reported quarterly, and any taxes withheld must be paid over when the quarterly tax return is filed. An annual return is also required.

Foreign-owned trading companies taxable at the 0% rate need only file a simple annual return without computations, unless otherwise requested by the Administrator of Income Tax.

Effective from 1 January 2008, an annual validation fee replaces the corporate filing fee. The amount payable is based on the activities of the company. Under the proposed fee scale, these fees will range from £100 to £1,000.

**Dividends.** Under the new corporate income tax regime, effective from 1 January 2008, no tax is withheld from dividends paid to foreign shareholders of Guernsey companies. Guernsey resident individual shareholders are subject to withholding tax on dividends received and on deemed distributions (see *Changes to Comply with European Union Requirements* above).

**Foreign Tax Relief.** Guernsey grants specific double taxation relief for income from its two treaty countries — Jersey and the United Kingdom — and grants unilateral relief otherwise. In general terms, Jersey or United Kingdom tax is relieved in full, and other taxes are relieved up to an effective maximum rate of 15%.

### C. Determination of Trading Income

**General.** The assessment is based on accounting profits, subject to certain adjustments. To be deductible, expenses must be incurred wholly and exclusively for the purposes of the trade.

Nonresident companies are exempt from tax on Guernsey-source bank interest.

**Tax Depreciation.** Depreciation is not an allowable deduction, but capital allowances are available on the cost of plant and machinery. The rate is generally 20% a year on the declining balance. Buildings are generally depreciated under the declining-balance method at an annual rate of 1.25%.

**Groups of Companies.** Under Guernsey law, a trading loss incurred by a member of a 90%-owned group of companies may be offset against profits earned in the same tax year by another member of the group. All members of the group must be incorporated and resident in Guernsey.

### D. Social Security Contributions

Social security contributions are payable on the salaries and wages of employees resident in Guernsey. For 2008, the maximum employer contribution is £7,017, and the maximum employee contribution is £3,884.

### E. Miscellaneous Matters

**Antiavoidance Legislation.** The Administrator of Income Tax has broad powers to adjust a taxpayer's tax liability and assess income tax that, in the administrator's opinion, has been deliberately avoided by a transaction entered into by the taxpayer.

As part of the major corporate income tax changes, which are effective from 1 January 2008, substantial antiavoidance measures are introduced. These measures are targeted at Guernsey residents with beneficial interests in companies (see Section B).



**Exchange Controls.** Guernsey does not impose any foreign-exchange controls.

**Debt-to-Equity Ratios.** Guernsey does not prescribe any debt-to-equity ratios.

**Types of Companies.** The Guernsey company law allows the incorporation of companies limited by shares, guarantee or shares and guarantee. A company limited by shares and guarantee may have both shareholders and guarantee members.

**Migration of Companies.** Guernsey law allows an overseas company to migrate into Guernsey and be registered as a Guernsey company. In addition, a Guernsey company may be removed from the Companies Register with the intention of becoming incorporated in another jurisdiction. In both cases, the law of the other jurisdiction must provide for the migration, the company must be solvent and certain other conditions must be met.

## F. Tax Treaties

Guernsey has entered into tax treaties with Jersey and the United Kingdom.

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## GUINEA

(Country Code 224)

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## A. At a Glance

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35 (b)
Branch Tax Rate (%)	35 (a)

Withholding Tax (%)	
Dividends and Directors' Fees	15
Interest	15
Royalties from Patents, Know-how, etc.	10 (c)
Payments for Services	10 (d)
Branch Remittance Tax	15 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is 3% of turnover unless exempt (see Section B).  
 (b) The tax may be deferred if proceeds are reinvested (see Section B).  
 (c) Applicable to payments to nonresidents.  
 (d) Applicable to payments by residents to nonresidents for services, including professional services, performed in Guinea.  
 (e) See Section B.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Guinean companies are taxed on the territoriality principle. As a result, Guinean companies carrying on a trade or business outside Guinea are not taxed in Guinea on the related profits. Foreign companies with activities in Guinea are subject to Guinean corporate tax on Guinean-source profits only.

**Tax Rates.** The regular corporate income tax rate is 35%. The minimum tax payable is 3% of annual turnover, but not less than FG 3 million or more than FG 40 million.

Profits realized in Guinea by branches of foreign companies are deemed to be distributed and therefore are subject to a branch withholding tax of 15% on after-tax income.

Corporations may apply for various categories of priority status and corresponding tax exemptions. The priority status varies, depending on the nature of the project and the level of investment.

**Capital Gains.** Capital gains are taxed at the regular corporate rate. The tax, however, may be deferred if the proceeds are used to acquire new fixed assets in Guinea in the following three financial years.

**Administration.** The fiscal year is from 1 January to 31 December. Tax returns must be filed by 30 April of the year following the fiscal year.

Companies must pay the relevant minimum tax before 15 January of the year following the fiscal year. Two advance payments of corporate tax, each equal to 33<sup>1</sup>/<sub>3</sub>% of the corporate tax for the previous year, are due on 15 June and 30 September of the fiscal year. Any balance due must be paid by 30 April of the following year.

**Dividends.** Dividends are subject to a 15% withholding tax, which may be credited by the recipient against corporate income tax.

**Foreign Tax Relief.** Foreign tax credits are not allowed. Income subject to foreign tax that is not exempt from Guinean tax under the territoriality principle is taxable net of the foreign tax.

## C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and

the rules contained in the OHADA Uniform Act on Accounting Law.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Head office overhead in excess of 10% of turnover derived by a Guinean branch;
- Interest paid on loans from shareholders to the extent the rate exceeds the current rate of the Central Bank and all of the interest on shareholder loans if the capital of the company is not fully paid;
- Corporate income tax and tax on real estate; and
- Certain specific charges.

**Inventories.** Inventory is normally valued at the lower of cost or market value.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at maximum rates specified by the tax law.

**Relief for Tax Losses.** Losses may be carried forward for three years. Losses may not be carried back.

**Groups of Companies.** Fiscal integration of Guinean companies equivalent to a consolidated filing position is not available.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on sales of goods and services and on imports	
Standard rate	18
Business activity tax ( <i>patente</i> ), calculated based on the nature of the business activity and the rental value of the place of business	Various
Registration duties, on transfers of real property or businesses	2 to 14
Payroll taxes, paid by employers on salaries	6
Social security contributions, on an employee's annual gross salary, up to FG 800,000	
Employer	18
Employee	5

#### E. Foreign-Exchange Controls

Exchange-control regulations exist in Guinea for foreign financial transactions.

#### F. Tax Treaty

Guinea has entered into a double tax treaty with France.

# HONDURAS

(Country Code 504)

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	25 (a)
Withholding Tax (%) (b)	
Dividends	0
Interest	5
Royalties	25
Leasing of Movable and Immovable Property	30
Communications	5
Public Entertainment Shows	30
Air, Sea and Land Transport	10
Mining Royalties	10
Salaries and Other Payments for Services	35
Fees and Commissions	35
Reinsurance	15
Videos and Films	10 (c)
Other	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (d)

- (a) A temporary Social Contribution Tax, which applied for the 2003 through 2007 fiscal years, was imposed at a rate of 5% on companies with net income exceeding L 1 million (approximately US\$52,548). For the 2007 fiscal year, the Social Contribution Tax was considered to be a deductible expense for income tax purposes. As of 1 January 2008, the Honduran government had not issued a decree to extend this tax to 2008.
- (b) Withholding taxes are imposed on payments to resident companies and individuals and to nonresident companies and individuals. The withholding taxes are considered final taxes.
- (c) This withholding tax applies to payments for films and video tapes for movies, television, video clubs and cable television.
- (d) Only companies engaged in agriculture, manufacturing, mining and tourism may carry forward net operating losses.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Honduran resident companies are taxed on their worldwide income. Resident companies are those incorporated in Honduras. Nonresident companies are subject to income tax only on income derived from Honduran sources.

**Corporate Income Tax Rates.** Companies are subject to corporate income tax at a rate of 25% on their net income.

A temporary Social Contribution Tax, which applied for the 2003 through 2007 fiscal years, was imposed at a rate of 5% on companies with net income exceeding L 1 million (approximately US\$52,548). For the 2007 fiscal year, the Social Contribution Tax was considered to be a deductible expense for income tax purposes. As of 1 January 2008, the Honduran government had not issued a decree to extend this tax to 2008.

Companies operating under the following special regimes are exempt from income tax, sales tax, customs duties and certain municipal taxes:

- Free Trade Zone;
- Industrial Processing Zone (Zona Industrial de Procesamiento, or ZIP);
- Temporary Import Regime (Régimen de Importación Temporal, or RIT);
- Agroindustrial Export Zone (Zona Agro-Industrial de Exportación, or ZADE); and
- Free Tourist Zone (Zona Libre Turística, or ZOLT).

**Asset Tax.** An asset tax is assessed based on net assets (as defined in the law) reported in the company's balance sheet. The asset tax rate is 1%. Income tax may be credited against asset tax. If the income tax equals or exceeds the asset tax for the tax year, no asset tax is due. If the income tax is less than the asset tax, the difference is payable as asset tax. In such circumstances, the asset tax represents a minimum tax for the year.

**Capital Gains.** Capital gains are subject to tax at a rate of 10%.

**Administration.** The regular statutory tax year runs from 1 January through 31 December. However, taxpayers may elect to use a different tax year by giving notice of such election to the tax authorities. Companies with a regular statutory tax year must file an annual income tax return and pay any corresponding tax due within 120 days after the end of the tax year. For companies with a different tax year, the filing and payment deadline is 90 days after the end of their tax year. Mandatory advance tax payments are payable each quarter based on the income tax liability for the preceding tax year.

**Dividends.** The withholding tax on dividends was eliminated as of 1 January 2004.

**Foreign Tax Relief.** Honduras does not grant any relief for foreign taxes paid.

### **C. Determination of Taxable Income**

**General.** Net taxable income is computed in accordance with generally accepted accounting and commercial principles, subject to certain adjustments required by the Honduran income tax law.

**Inventories.** Inventories are valued using the first-in, first-out (FIFO), last-in, first-out (LIFO) or weighted-average cost methods.

**Provisions.** Provisions for contingent liabilities, such as severance pay, are not deductible for tax purposes. However, payments of such liabilities are deductible expenses.

**Tax Depreciation.** Depreciation may be computed using the straight-line method. Companies may obtain authorization from the tax authorities to use other depreciation methods. However, after a company selects a depreciation method, the method must be applied consistently thereafter. The following are the applicable straight-line method rates for some common assets.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	2.5 to 10
Plant and machinery	10
Vehicles	10 to 33
Furniture and office equipment	10
Tools	25

**Relief for Losses.** Companies engaged in agriculture, manufacturing, mining and tourism may carry forward net operating losses for three years. However, certain restrictions apply. Net operating losses may not be carried back.

**Groups of Companies.** Honduran law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Sales tax	12
Customs duties	1 to 20
Payroll taxes; paid by employers; average rate	8.5
Municipal taxes	
Property tax; imposed on companies owning real estate	Various
Industry trade and service municipal tax; imposed monthly on income derived from the operations of companies; rates vary according to the annual production volume, income or sales	
Up to L 500,000	0.030
From L 500,000 to L 10,000,000	0.040
From L 10,000,000 to L 20,000,000	0.030
From L 20,000,000 to L 30,000,000	0.020
Over L 30,000,000	0.015

#### **E. Foreign-Exchange Controls**

The Honduran currency is the lempira (L). As of 30 September 2007, the exchange rate for the lempira was L 18.89 = US\$1.

No restrictions are imposed on foreign-trade operations or foreign currency transactions.

#### **F. Tax Treaties**

Honduras has not entered into any income tax treaties with other countries. However, Honduras has entered into a tax information exchange agreement with the United States.

# HONG KONG

(Country Code 852)

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## A. At a Glance

Corporate Income Tax Rate (%)	17.5 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	17.5 (a)
Withholding Tax (%)	
Dividends	0
Interest	0
Royalties from Patents, Know-how, etc.	
Paid to Corporations	5.25/17.5 (b)
Paid to Individuals	4.8/16 (b)
Branch Remittance Tax	0



## Net Operating Losses (Years)

Carryback	0
Carryforward	Unlimited

- (a) The government has announced its intention to reduce the corporate tax rate from 17.5% to 16.5% and the standard tax rate for noncorporate entities from 16% to 15%, effective from the fiscal year beginning 1 April 2008.
- (b) This is a final tax applicable to persons not carrying on business in Hong Kong. The general withholding tax rate is 5.25% (4.95% on the enactment of the tax reductions described in footnote [a] above) for payments to corporations. For payments to individuals (including unincorporated businesses), the general withholding tax rate is 4.8% (4.5% on the enactment of the tax rate reductions described in footnote [a] above). However, if a recipient of payments is an associate of the payer and if the intellectual property rights were previously owned by a Hong Kong taxpayer, a withholding tax rate of 17.5% (16.5% on the enactment of the tax rate reductions described in footnote [a] above) applies to payments to corporations and, for payments to individuals (including unincorporated businesses), a 16% (15% on the enactment of the tax reduction described in footnote [a] above) rate applies.

## B. Taxes on Corporate Income and Gains

**Profits Tax.** Companies carrying on business in Hong Kong are subject to profits tax on profits arising in or derived from Hong Kong. However, a company not carrying on business in Hong Kong is not subject to profits tax, even on income from sources in Hong Kong. A Hong Kong business is not subject to profits tax on income sourced outside Hong Kong.

The basis of taxation in Hong Kong is territorial. The determination of the source of profits or income can be extremely complicated and often involves uncertainty. It requires case-by-case consideration. To obtain certainty concerning this and other tax issues, taxpayers may apply to the Inland Revenue for advance rulings on the tax implications of a transaction, subject to payment of certain fees and compliance with other regulations.

**Rates of Profits Tax.** For the fiscal year beginning 1 April 2007, the corporate rate of profits tax is 17.5%. However, the government has announced its intention to reduce the corporate tax rate from 17.5% to 16.5%, effective from the fiscal year beginning 1 April 2008.

Interest income and trading profits derived by corporations from qualifying debt instruments with a maturity period of between three to seven years are taxed at a rate of 8.75%, while those derived from instruments with a longer maturity period are exempt from tax. Professional reinsurance companies authorized in Hong Kong may elect to be taxed at 50% of the normal profits tax rate (that is, at a rate of 8.75%) on the income derived from the business of reinsurance of offshore risks. Authorized and certain bona fide widely held mutual fund corporations and unit trusts are exempt from tax.

When an accounting period does not coincide with a fiscal year, the profit for the accounting period is deemed to be the profit for the fiscal year in which the period ends. Special rules govern commencements and cessations of businesses and deal with accounting periods of shorter or longer duration than 12 months.

**Tax Exemption for Nonresident Funds.** Under the Revenue (Profits Tax Exemption for Offshore Funds) 2006 Ordinance (the 2006

Ordinance), nonresident persons, including corporations, partnerships and trustees of trust estates, are exempt from tax in Hong Kong if their activities in Hong Kong are restricted to certain specified transactions and to transactions incidental to such transactions. For the purposes of the 2006 Ordinance, a non-individual entity is regarded as a nonresident if its place of central management and control is located outside Hong Kong. Specified transactions are broadly defined to cover most types of transactions typically carried out by investment funds, such as transactions involving securities future and currency contracts, commodities and the making of deposits other than by money-lending businesses.

To deter Hong Kong residents from taking advantage of the exemption, the 2006 Ordinance provides that, under certain circumstances, a resident investor in an exempt nonresident fund is deemed to derive a portion of the exempt income of the fund and is subject to tax in Hong Kong on such income.

**Capital Gains.** Capital gains are not taxed, and capital losses are not deductible for profits tax purposes.

**Administration.** Companies generally make two payments of profits tax during a fiscal year. The first payment consists of 75% of the provisional tax for the current year plus 100% of the final payment for the preceding year. The second payment equals 25% of the provisional tax for the current year. The timing of payments is determined by assessment notices rather than by set dates, generally during November to April of the fiscal year.

**Dividends.** Dividends are exempt from tax in the hands of the recipient. Hong Kong has neither a withholding tax nor a credit system for dividends; all dividends are paid gross as declared.

**Foreign Tax Relief.** In certain circumstances, a deduction is allowed for foreign taxes paid. A foreign tax credit is available under the tax agreements entered into by Hong Kong with Belgium, Mainland China and Thailand. However, the amount of the credit may not exceed the amount of tax payable under the Hong Kong tax laws with respect to the relevant item of income. For details concerning Hong Kong's tax agreements, see Section E.

### **C. Determination of Assessable Profits**

**General.** The assessment is based on accounts prepared on generally accepted accounting principles, subject to certain statutory tax adjustments and provisions.

In general, interest income earned on deposits with financial institutions is exempt from profits tax. However, this exemption does not apply if the recipient of the interest is a financial institution or if the deposits are used as security for borrowings and the interest expense with respect to the borrowings is claimed as a tax deduction.

Expenses must be incurred in the production of chargeable profits. Certain specified expenses are not allowed, including domestic and private expenses, capital expenditures, the cost of improvements, sums recoverable under insurance and tax payments. The deductibility of interest is subject to restrictions (see Section D).

**Inventories.** Stock is normally valued at the lower of cost or net realizable value. Cost must be determined using the first-in, first-out (FIFO) method or an average cost, standard cost or adjusted selling price basis. The last-in, first-out (LIFO) method is not acceptable.

### **Capital Allowances**

*Industrial Buildings.* An initial allowance of 20% is granted on new industrial buildings in the year the expenditure is incurred, and annual depreciation allowances are 4% of qualifying capital expenditure beginning in the year the building is first put into use. No initial allowance is granted on existing buildings, but annual depreciation allowances may be available. The definition of industrial building is broad, but it does not include commercial buildings such as hotels and office buildings.

*Commercial Buildings.* An annual allowance (4% of qualifying capital expenditure each year) is available on commercial buildings such as offices and hotels. Refurbishment costs for premises, other than those used as domestic dwellings, may be deducted in equal amounts over a period of five years.

*Prescribed Plant and Machinery.* Companies may immediately write off 100% of expenditure on manufacturing plant and machinery and on computer software and hardware.

*Other Plant and Machinery, and Office Equipment.* An initial allowance of 60% is granted for nonmanufacturing plant and machinery, and office equipment in the year of purchase. An annual allowance of 10%, 20% or 30% under the declining-balance method is available on the balance of the expenditure beginning in the year the asset is first used in the business. Consequently, the total allowances (initial and annual) in the first year can be 64%, 68% or 72%.

*Motor Vehicles.* An initial allowance of 60% is granted for motor vehicles in the year of purchase. An annual allowance of 30% under the pooling system (declining-balance method) is allowed on the balance of the expenditure beginning in the year the asset is first used in the business.

*Recapture.* Depreciation allowances are generally subject to recapture if the proceeds from the sale of a depreciable asset exceed its tax-depreciated value. The recapture rule also applies to prescribed plant and machinery (manufacturing plant and machinery and computer hardware and software) that were fully written off in the year of acquisition. Consequently, in the year of disposal, the sales proceeds from these assets generally are included in chargeable profits, up to the original costs of the assets. Allowances for commercial and industrial buildings may be recaptured, up to their original costs. Assets depreciated under the pooling system (declining-balance method) are allocated to one of three pools according to their depreciation rates, which are 10%, 20% or 30%. Proceeds from the sale of an asset in a pool (up to the cost of the asset) are deducted from the pool balance. If a negative balance results within the pool, a balancing charge is added to taxable profits.

**Relief for Business Losses.** A company's business losses may be used to offset any income of the company in the same year. Any

business losses that are not so utilized are carried forward without time limit to offset future profits of the company, regardless of whether these profits are from the business or whether the same business is still carried on. No carryback is possible. Certain rules prevent trafficking in loss companies. In addition, specific rules govern the offset of normal business losses against concessionary trading receipts (that is, those taxed at concessionary rates instead of the full normal rates) and vice versa.

**Groups of Companies.** Consolidated filing is not permitted.

Hong Kong does not provide group relief for tax losses.

## **D. Miscellaneous Matters**

**Mergers and Reorganizations.** When considering an acquisition in Hong Kong, a company must first decide whether to acquire the shares or the assets of the target company. Unlike some other jurisdictions, Hong Kong tax law does not allow a step-up in tax basis of the underlying assets if shares are acquired. The target company retains the same tax basis for its assets, regardless of the price paid for the shares.

**Antiavoidance Legislation.** Transactions that are artificial, fictitious or predominantly tax-driven may be disregarded under general antiavoidance tax measures. In addition, specific measures deny the carryforward of tax losses if the dominant reason for a change in shareholding of a corporation is the intention to use the tax losses. Other specific antiavoidance measures include those designed to counteract certain leverage and cross-border leasing, non-arm's length transactions between a Hong Kong resident company and its foreign affiliates and the use of personal service companies to disguise employer-employee relationships.

**Foreign-Exchange Controls.** Hong Kong imposes no foreign-exchange controls.

**Interest Expense.** In an attempt to combat avoidance, heavy restrictions have been placed on the deductibility of interest expense. In general, interest is deductible only if the recipient is taxable in Hong Kong or if it is paid to a bona fide financial institution in Hong Kong or overseas.

**Reversion of Sovereignty to Mainland China.** Since 1 July 1997, Hong Kong has been a Special Administrative Region of Mainland China under Article 31 of the constitution of Mainland China. However, as a Special Administrative Region, Hong Kong has a tax system that is based on common law and distinct from the system used in Mainland China.

In addition, on its own, Hong Kong, using the name "Hong Kong, China," may maintain and develop relations, and may conclude and implement agreements, with foreign states and regions and relevant international organizations in such fields as economics, trade, finance, shipping, communications, tourism, culture and sports.

## **E. Tax Treaties**

Both the Hong Kong and Mainland China tax authorities take the view that Mainland China's tax treaties with other countries do not cover Hong Kong.

Hong Kong has entered into full comprehensive double tax agreements, modeled on the conventional tax treaty adopted by Organization for Economic Cooperation and Development (OECD), with Belgium, Mainland China and Thailand. Hong Kong has also signed such a double tax agreement with Luxembourg. Subject to certain ratification procedures, the Luxembourg treaty will become effective on 1 January 2008 and 1 April 2008 in Luxembourg and Hong Kong, respectively.

For the avoidance of double taxation on shipping income, Hong Kong has entered into agreements with Denmark, Germany, the Netherlands, Norway, Singapore, Sri Lanka, the United Kingdom and the United States. The agreements provide for tax exemption in one territory for profits and capital gains derived by an enterprise of the other territory from the operation of ships in international traffic. Apart from these agreements, reciprocal exemption provisions with the tax authorities of Korea and New Zealand have been confirmed.

Hong Kong has also signed double tax agreements relating to airline profits with several jurisdictions, including Bangladesh, Canada, Croatia, Denmark, Estonia, Finland, Germany, Iceland, Israel, Jordan, Kenya, Korea, Kuwait, Macau, Mauritius, Mexico, the Netherlands, New Zealand, Norway, the Russian Federation, Singapore, Sri Lanka, Sweden, Switzerland and the United Kingdom. After these agreements take effect, international transport income of Hong Kong airlines is exempt from tax under the agreements in these signatory countries. However, international transport income that is exempt from tax overseas under the double tax agreements is taxed in Hong Kong.

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## HUNGARY

(Country Code 36)

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*A foreign-exchange rate of HUF 175.51 = US\$1 is used to convert Hungarian forints into U.S. dollars in this chapter.*

**A. At a Glance**

Corporate Income Tax Rate (%)	10/16 (a)
Solidarity Surcharge Rate (%)	4 (b)
Capital Gains Tax Rate (%)	10/16 (a)
Branch Tax Rate (%)	10/16 (a)(c)
Withholding Tax (%) (d)	
Dividends	
Paid to Companies	0 (e)
Paid to Individuals	25/35 (f)
Interest	
Paid to Companies	0 (g)
Paid to Individuals	20
Royalties	0 (g)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5/Unlimited (h)

- (a) The 16% rate is the standard rate of corporate income tax. The 10% rate applies to the first HUF 50 million of taxable income if certain conditions are satisfied (see Section B). Effective from 1 July 2007, all taxpayers must pay tax on the alternative minimum tax base if this base exceeds taxable income calculated under the general rules (for further details, see Section B).
- (b) See Section B.
- (c) Foreign companies are subject to special rules for the computation of the tax base (see Section B).

- (d) These rates may be reduced by tax treaties.
- (e) Withholding tax on dividends paid to companies is abolished, effective from 1 January 2006.
- (f) For details, see Section B.
- (g) Withholding tax on interest and royalties paid to foreign companies was abolished, effective from 1 January 2004.
- (h) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies incorporated in Hungary are subject to corporate tax on their worldwide profits. A company that is not incorporated in Hungary but has its place of effective management in Hungary is regarded as Hungarian resident for corporate tax purposes and, accordingly, is subject to corporate tax on its worldwide profits. If a double tax treaty applies, the provisions of the treaty determine residence. Foreign companies carrying out taxable activities in Hungary are subject to corporate tax on their net profits derived from Hungarian sources. Under the Law on Foreign Investment, foreign enterprises (except for European Economic Area [EEA] residents) may carry out business activities in Hungary only through a Hungarian subsidiary or a branch office, with certain exceptions, such as for construction activities.

**Rates of Corporate Income Tax.** The standard rate of income tax for Hungarian and foreign companies is 16%. However, for the first HUF 50 million (approximately US\$285,000) of taxable income, the tax rate is 10%. The tax benefit resulting from the lower tax rate can be up to HUF 3 million (approximately US\$17,100). The 10% rate applies if certain conditions are met, including the following:

- The company has not received a tax allowance; and
- The company pays its employees an average salary of at least two times the statutory minimum wage.

Registered branch offices are taxed in almost the same manner as Hungarian corporations. If a foreign company operates through branches, taxable income for each branch must be calculated separately. The losses incurred by one Hungarian branch may not offset the income of another Hungarian branch. Administration and general overhead costs incurred either abroad or in Hungary are deductible, up to an amount calculated by applying to the costs the ratio of revenue derived from Hungarian operations to total revenue. If a permanent establishment acts as an agent, a deemed commission of at least 5% is treated as taxable income. An applicable tax treaty may override these rules.

**Solidarity Surtax.** A solidarity surtax is imposed at a rate of 4% on companies. The surtax took effect on 1 September 2006. The tax base of the solidarity surtax equals the pretax profit less a limited number of deductions, such as dividends received, income attributable to foreign permanent establishments, subsidies, allowances, services received without consideration, capital gains on “reported shares” (see *Capital Gains* below) and certain research and development (R&D) expenses.

**Alternative Minimum Tax.** Effective from 1 July 2007, taxpayers must determine their alternative minimum tax (AMT) base and pay corporate income tax at the general rates of 10% and 16% on this base if the AMT base exceeds the tax base calculated according to the general rules. The AMT base generally equals 2% of

revenues less cost of goods sold and income attributable to foreign permanent establishments. The AMT payment obligation does not apply if the taxpayer files detailed information with the tax authorities demonstrating that its costs and revenues were accounted for in accordance with the relevant rules.

**Tax Incentives.** Companies may reduce their corporate tax base by 50% of the following:

- The amount by which interest income received from related parties exceeds interest expenses paid to related parties;
- Capital gains derived from stock-exchange transactions (see *Capital Gains* below); and
- Royalty income.

The sum of the above reductions may not exceed 50% of the pre-tax profit of the company.

Companies may benefit from a development tax allowance (tax credit), conforming with European Community (EC) law, for up to 10 tax years if they satisfy the following conditions:

- They make an investment of at least HUF 3 billion (approximately US\$17.1 million) or an investment of HUF 1 billion (approximately US\$5.7 million) in an underdeveloped region.
- They meet either of the following conditions:
  - The average number of employees increases by at least 150 (or 75 in underdeveloped regions); or
  - Compared to the tax year preceding the commencement of the investment, the increase in the annual wage cost is at least 600 times (300 times in underdeveloped regions) the minimum wage (for 2008, the minimum wage is HUF 69,000 [approximately US\$390]).
- The investment comprises one of the following:
  - The acquisition of a new asset;
  - The enlargement of existing assets; or
  - The fundamental modification of the final product or the previous production method as a result of the investment.

A development tax allowance can also be claimed for investments of at least HUF 100 million (approximately US\$570,000) in the fields of food product hygiene, environmental protection, broadband internet service, basic or applied research or film production, if certain other requirements are met. Investments of any amount in any field that result in a certain level of job creation may also qualify for a tax allowance.

In general, companies must submit a notification regarding the allowance to the Ministry of Finance before the start date of the investment and self-assess the tax allowance. However, companies must obtain permission from the Ministry of Finance if their investment-related costs and expenses exceed €100 million (approximately US\$142,870,000 million).

The tax allowance may reduce the company's corporate income tax liability by up to 80%. Depending on the location of the project, the allowance may cover between 25% and 50% of the eligible investment costs. In general, the allowance may be used within a 10-year period after the investment is put into operation, but it must be used by the 14th year after the declaration for the allowance was filed. In general, the 10-year period begins in the



year following the year in which the investment is put into operation. However, the investor may request that the 10-year period begin in the year in which the investment is put into operation.

In addition to the development allowance for applied research mentioned above, a new incentive for research activities is effective from 2005. Under this incentive, 10% of the wage costs for employees allocated to research and development (R&D) or software development can be claimed as a corporate income tax credit in the tax year of the wage expenditure and in the following three tax years in equal installments. This tax credit may be claimed in addition to the double deduction of R&D costs.

In addition to the development tax allowance for film production mentioned above, new incentives related to film production took effect on 1 April 2004. These incentives aim to encourage Hungarian taxpayers to become involved in production financing. Under this incentive, the costs for the film producer may be reduced by up to 20%.

Tax relief is provided to Hungarian companies sponsoring film production carried out in Hungary. The tax relief, in the form of a tax credit and tax deduction, can provide the sponsor with a return of at least 16%. The tax relief may be carried forward for a period of three years. It is available only if the sponsor does not receive any rights with respect to the sponsored film.

Based on the comments of the European Commission, it is expected that, effective from 2008, films will be subject to a more comprehensive cultural test to qualify for tax incentives.

Certain other investment incentives introduced before 31 December 2002 remain available until 2011.

**Capital Gains.** With the exception of capital gains on “reported shares” (see below), capital gains derived by Hungarian companies are included in taxable income and taxed at the standard corporate income tax rates. Only 50% of capital gains derived from stock-exchange transactions is subject to tax.

Capital gains derived by nonresident companies without a permanent establishment in Hungary are exempt from Hungarian tax.

If a taxpayer has held at least 30% of the registered shares of an entity for at least one year and reported the acquisition of the shares within 30 days after the date of the acquisition to the Hungarian tax authorities, the shares are considered to be “reported shares.” Capital gains derived from the sale of the reported shares are exempt from corporate income tax and solidarity surtax. Capital losses incurred on such investments are not deductible for tax purposes.

**Administration.** In general, the calendar year is the tax year. However, foreign-owned companies that are members of groups consolidated for accounting purposes and branches of foreign companies may elect a tax year corresponding to the tax year of the parent company. Companies selecting a tax year other than the calendar year must notify the tax authorities within 15 days after making the decision on the selection.

For companies with corporate income tax liability exceeding HUF 5 million (approximately US\$28,500) in the preceding year, advance payments are assessed in 12 equal installments during the tax year. Other companies make quarterly advance payments. In addition, by 20 December of the tax year, companies must make a top-up payment to increase the total of their corporate income tax advance payments to an amount equal to at least 90% of their total annual corporate tax liability (the top-up requirement also applies to the solidarity surtax).

Companies must file their corporate income tax returns and pay any balance of tax due by the 150th day after the end of the tax year.

Extensions to file tax returns may not be obtained in advance of the due date. However, a company may obtain an extension after the due date if it files, with the completed late return, a letter requesting an extension to the date the return is filed. At their discretion, the tax authorities may accept the late return as being filed on time if the letter explains the reasons for the delay and establishes that the tax return is being filed within 15 days after the reason for the delay expires, and if the company pays any balance of tax due shown on the return.

If an extension for filing is granted, no late filing or payment penalties are imposed, and no interest is charged on the late payment. If an extension for filing is not granted, a penalty of up to HUF 500,000 (approximately US\$2,850) can be imposed. In addition, interest is charged on the late payment of tax at a rate equal to twice the National Bank of Hungary prime discount rate (on 15 November 2007, the prime discount rate was 7.5%). Interest is charged beginning on the date the payment is due, and it may be charged for up to three years.

In addition to the interest described above, a taxpayer that files a late tax return in response to a request by the tax authorities is subject to a fine or penalty of up to 50% of the tax due.

**Dividends.** Withholding tax on dividends paid to foreign companies is abolished, effective for dividends paid on or after 1 January 2006.

Withholding tax at a rate of 25% is imposed on dividends paid to resident and nonresident individuals. For “excess dividends,” this rate is increased to 35%. Excess dividends are defined as dividends paid in excess of 30% of the equity “pertaining” (as defined in the law) to the shareholder, based on his or her participation in the company. These rules are contained in the Hungarian personal income tax law.

Tax treaties may override Hungarian domestic law with respect to the withholding tax on dividends.

**Interest and Royalties.** Hungary does not impose withholding tax on interest and royalties paid from Hungary to foreign companies. This exemption applies to entities resident in any jurisdiction. Hungary imposes withholding tax at a rate of 20% on interest paid to individuals. Hungary does not impose withholding tax on royalties paid from Hungary to nonresident foreign individuals unless the income is realized directly from Hungarian intangible property or through a Hungarian fixed establishment.

**Foreign Tax Credit.** Foreign taxes paid on foreign-source income may be credited against Hungarian tax.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared in accordance with Hungarian accounting standards. These standards are set forth in the law on accounting, which is largely modeled on European Union (EU) directives. Taxable income is determined by adjusting the profits shown in the annual financial statements by items described in the Act on Corporate Income Tax. Some items are not subject to tax as income, such as dividends received (but see the controlled foreign corporation rules in Section E).

Some items are not deductible for tax purposes, such as impairment for doubtful accounts receivable and 50% of the amount by which interest expense paid to related parties exceeds the interest income received from related parties (the latter restriction applies in certain circumstances only).

**Tax Depreciation.** In general, depreciation is deductible in accordance with the Annexes to the Act on Corporate Income Tax. The annexes specify, among others, the following straight-line tax depreciation rates.

Asset	Rate (%)
Buildings used in hotel or catering businesses	3
Commercial and industrial buildings	2 to 6
Leased buildings	5
Motor vehicles	20
Plant and machinery	
General rate	14.5
Automation equipment, equipment for environmental protection, medical equipment and other specified items	33
Computers	50
Intellectual property and film production equipment	50

**Relief for Losses.** In general, losses can be carried forward in accordance with the measures in effect for the year in which the loss was generated.

Losses incurred in 2004 and subsequent years may be carried forward indefinitely. Companies incurring losses in their fifth year of existence or in subsequent years must obtain permission from the Hungarian tax authorities to carry forward these losses if their pretax income is negative and if either of the following conditions exists:

- Total revenues are less than 50% of the sum of costs and expenses; or
- The tax base was negative in the previous two tax years.

Losses incurred before 2004 may be carried forward for five tax years. However, losses incurred during the first four tax years of a company's existence may be carried forward indefinitely. The earliest losses must be used first when carrying forward losses (first-in, first-out [FIFO] method).

A successor company may deduct losses incurred by the predecessor company without the permission of the tax authorities, to the extent that the predecessor did not claim this relief.

**Groups of Companies.** The Hungarian tax law does not allow the filing of consolidated tax returns by groups of companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes and provides the 2008 rates for such taxes.

Nature of Tax	Rate
Value-added (sales) tax, on goods, services and imports	
Standard rate	20%
Preferential rate	5%
Social security contributions, on gross salaries; in general, expatriates do not participate; paid by	
Employer	29%
Employee; the contribution represents the sum of the 6% health-care contribution and the 9.5% pension fund contribution; the base of the pension fund contribution is capped at HUF 7,117,500 (US\$40,570)	15.5%
Unemployment solidarity fund, on gross salaries; paid by	
Employer	3%
Employee	1.5%
Excise duty, on various goods, including gasoline, alcohol, tobacco, beer, wine and champagne	Various
Local taxes introduced by most municipal districts (maximum rates set by national law)	
Buildings (In 2005 and 2006, municipalities may increase the amount per square meter by the inflation rate of the previous year.)	Either HUF 900 per square meter or 3% of the assessed value (assessed value is 50% of the market value)
Undeveloped property (In 2005 and 2006, municipalities may increase the amount per square meter by the inflation rate of the previous year.)	Either HUF 200 per square meter or 3% of the assessed value (assessed value is 50% of the market value)
Number of employees	HUF 2,000 per locally based employee per year
Local business tax; imposed on turnover or gross margin; 200% of the tax is deductible from the corporate tax base if the company is profitable; maximum rate (A decision of the European Court of Justice held that this tax was compatible with EC law.)	2%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Hungarian currency is the forint (HUF).

The Hungarian foreign-exchange rules were liberalized in June 2001. Under the liberalized rules, approval and reporting requirements no longer apply to various types of transactions, including the obtaining of loans from foreign companies. In addition, payments in foreign currency and business contracts in foreign currency are now allowed between Hungarian companies. However, limited reporting requirements may continue to apply to some transactions.

Companies doing business in Hungary must open a bank account at a Hungarian bank.

Payments in Hungarian or foreign currency may be freely made to parties outside Hungary. The forint is freely convertible.

**Transfer Pricing.** Under transfer-pricing rules, for contracts between related or associated companies, the tax authorities may adjust the tax base of the companies by the difference between the market price and contract price. The market price must be determined by one of the following methods:

- Comparable uncontrolled price method;
- Resale price method;
- Cost-plus method; or
- Any other appropriate method.

These methods reflect the 1995 Organization for Economic Cooperation and Development (OECD) guidelines. A decree issued by the Ministry of Finance describes the requirements for the documentation of related-party transactions, which apply to contracts concluded after 1 September 2003. Effective from 2005, transfer-pricing documentation must be prepared for all related-party agreements that are in effect, regardless of the date on which the agreement was concluded.

The transfer-pricing rules also apply to in-kind capital contributions (except on foundation) and the withdrawal of assets in kind (in the case of capital reduction and possibly in the case of winding-up) by the majority shareholder. Effective from 1 January 2008, the transfer-pricing rules also apply to in-kind dividend payments. Effective from 1 January 2007, advance pricing agreements (APAs) are available.

Hungary has ratified and is applying the Arbitration Convention.

**Controlled Foreign Corporations.** Effective from 1 January 2008, a controlled foreign corporation (CFC) is defined as a company that meets both of the following conditions:

- It is owned by a Hungarian taxpayer or a related party; and
- It has no registered seat or permanent establishment in the EU, an OECD member state, or a country that has a double tax treaty in effect with Hungary.

Dividends received from CFCs do not qualify for the participation exemption regime and, accordingly, are treated as taxable income to the Hungarian shareholders. Capital losses on investments in CFCs are not deductible for tax purposes. Hungarian companies

may not benefit from transfer-pricing adjustments regarding transactions with CFCs. Under the Hungarian tax law, the income of a CFC does not need to be included in the tax base of its Hungarian resident parent entity.

**Debt-to-Equity Rules.** A Hungarian company's taxable income is increased by the interest payable on the portion of loans (except bank loans), bonds, and other liabilities on which interest is payable in excess of three times the amount of the company's average net equity during the tax year.

**Foreign Investment.** No restrictions exist on the percentage of ownership foreigners may acquire in a Hungarian company, except for specific types of companies.

## F. Treaty Withholding Tax Rates

Double tax treaties are in effect as of 15 November 2007 with the countries listed in the table below. Hungary abolished withholding tax on dividends paid to companies, effective from 1 January 2006. It also abolished withholding tax on interest and royalties paid from Hungary to foreign companies, effective from 1 January 2004. Hungary does not impose withholding tax on royalties paid from Hungary to nonresident foreign individuals unless the income is realized directly from Hungarian intangible property or through a Hungarian fixed establishment. Under Hungarian domestic law, interest income of individuals is generally subject to tax at a rate of 20%. Hungary applies the European Union (EU) Savings Directive. In addition, income derived from securities traded on stock exchanges in EU member states is taxed under special rules. The table below lists only the withholding tax rates on dividends and interest paid to individuals.

Country	Dividends Paid to Individuals Rate (%)	Interest Paid to Individuals Rate (%)
Albania	10	0
Australia	15	10
Austria	10	0
Belarus	15	5
Belgium	10	15
Brazil	15	15
Bulgaria	10	10
Canada	15	10
China	10	10
Croatia	10	0
Cyprus	15	10
Czech Republic	15	0
Denmark	15	0
Egypt	20	15
Estonia	15	10
Finland	15	0
France	15	0
Germany	15	0
Greece	10	10
Iceland	10	0
India	10	10
Indonesia	15	15
Ireland	15	0

<b>Country</b>	<b>Dividends Paid to Individuals Rate (%)</b>	<b>Interest Paid to Individuals Rate (%)</b>
Israel	15	0
Italy	10	0
Japan	10	10
Kazakhstan	15	10
Korea	10	0
Kuwait	0	0
Latvia	10	10
Lithuania	15	10
Luxembourg	15	0
Macedonia	15	0
Malaysia	10	15
Malta	15	10
Moldova	15	10
Mongolia	15	10
Morocco	12	10
Netherlands	15	0
Norway	10	0
Pakistan	20	15
Philippines	20	15
Poland	10	10
Portugal	15	10
Romania	15	15
Russian Federation	10	0
Serbia and Montenegro	15	10
Singapore	10	0
Slovak Republic	15	0
Slovenia	15	5
South Africa	15	0
Spain	15	0
Sweden	15	0
Switzerland	10	10
Thailand	25/35	25
Tunisia	12	12
Turkey	15	10
Ukraine	15	10
United Kingdom	15	0
United States	15	0
Uruguay	15	15
Vietnam	10	10
Yugoslavia (a)	10	0
Nontreaty countries	25/35 (b)	20

- (a) This is the treaty with the former Yugoslavia. The treaty currently applies to Bosnia-Herzegovina only, because Hungary has entered into separate tax treaties with Croatia, Macedonia, the Union of Serbia and Montenegro and Slovenia. The withholding tax rates under these treaties are listed in the table above. Hungary is negotiating a tax treaty with Bosnia-Herzegovina.
- (b) See Section B.

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**A. At a Glance**

Corporate Income Tax Rate (%)	18 (a)
Capital Gains Tax Rate (%)	18 (b)
Branch Tax Rate (%)	18
Withholding Tax (%)	
Dividends	
Residents	0
Nonresidents (c)	
Companies	15
Individuals	10
Interest	
Residents	0
Nonresidents	10 (d)
Royalties from Patents, Know-how, etc.	
Residents	0
Nonresidents (e)	
Companies	18
Partnerships	26
Payments under Leases and Rent	
Residents	0
Nonresidents (e)	
Companies	18
Partnerships	26
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

- (a) A 5% rate applies to International Trading Companies (see Section B), and a 26% rate applies to partnerships.
- (b) Capital gains are taxed as ordinary income. Capital gains may be offset by extraordinary depreciation (for details, see Section B).
- (c) Tax treaties may reduce the withholding tax rates.
- (d) A 10% withholding tax is imposed on interest paid to nonresidents unless, on application, the local tax director grants an exemption from withholding tax. Alternatively, the withholding tax may be refunded.
- (e) Royalties, payments under leases and rent payments that are paid to nonresident companies and partnerships are subject to withholding tax. An 18% rate applies to companies and a 26% rate applies to partnerships, unless a tax treaty provides a reduced rate.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are taxed on their worldwide income. Resident corporations are those incorporat-



ed, registered, domiciled or effectively managed in Iceland. Non-resident companies are taxed only on their income earned in Iceland.

**Rate of Corporate Tax.** The rate of corporate income tax is 18%. The rate for taxable partnerships is 26%. International Trading Companies (see *International Trading Companies* below) are subject to tax at a reduced rate of 5%.

**International Trading Companies.** Effective from 1 January 1999, resident public and private companies that meet certain requirements may qualify as International Trading Companies (ITCs) in Iceland. ITCs are subject to corporate income tax at a reduced rate of 5%. Effective from 1 March 2004, no new ITCs can be established. On 1 January 2008, the laws and regulations regarding ITCs will expire.

Dividends received from ITCs are fully taxable. This is contrary to the general regime under which dividends received by resident companies from other resident companies are fully deductible for the recipient. ITCs are exempt from the net worth taxes and from stamp duties. They can register for value-added tax (see Section D).

**Capital Gains.** Capital gains result from profits derived from sales of assets. These gains are included in ordinary income and taxed at the normal income tax rates.

Capital gains may be offset by extraordinary depreciation on other fixed assets or on fixed assets acquired within two years of the sale. If the fixed assets are not acquired within two years of the sale, the gain is included in income, and a 10% penalty is imposed.

**Administration.** The tax year is generally the calendar year.

Due dates for filing income tax returns vary, depending on the type of entity. The filing date for limited companies and partnerships, which is 31 May, is usually extended. Monthly advance tax payments are due on the first day of each month except for January and October. Each advance payment equals 10.5% of the previous year's tax. The tax due is determined when the annual assessment is issued. Companies generally must pay the unpaid balance in two equal monthly payments in November and December.

*Advance Rulings.* Both resident and nonresident companies may request advance rulings on most corporate income tax consequences of future transactions. Rulings are issued only on matters of substantial importance.

**Dividends.** Dividends earned by domestic companies are considered ordinary income. However, dividends received from domestic companies and from foreign companies that are taxed in a similar manner to Icelandic companies are fully deductible.

Withholding tax is imposed on dividends paid to nonresidents. The rates are 15% for companies and 10% for individuals. Tax treaties may reduce or eliminate the dividend withholding tax. However, no withholding tax is imposed on distributions by taxable partnerships.

**Foreign Tax Relief.** Relief for double taxation may be obtained unilaterally under Icelandic domestic law or under a tax treaty. Unilateral relief may be granted though a tax credit against Icelandic income tax at the discretion of the local tax director. Foreign income and capital taxes may be deducted as expenses from income.

### C. Determination of Trading Income

**General.** The computation of taxable income is based on net income in the financial statements prepared according to generally accepted accounting principles.

In general, expenses incurred to generate and maintain business income are deductible. Companies may deduct dividends received during the year (see Section B).

**Inventories.** Inventories are valued at the lower of cost or market value. Cost must be determined using the first-in, first-out (FIFO) method. Five percent of the value of inventory at the end of the year is deductible.

**Tax Depreciation.** Depreciation must be calculated using the declining-balance method. Fixed assets cannot be depreciated below 10% of cost. The following are some of the applicable depreciation rates.

Assets	Rate (%)
Buildings	
Office and retail	1 to 3
Industrial plants	3 to 6
Drilling holes and transmission lines	7.5 to 10
Ships, aircraft, cars carrying fewer than nine persons (except taxis)	10 to 20
Automobiles and other transport vehicles	20 to 35
Industrial machinery and equipment	10 to 30
Office equipment	20 to 35
Machinery and equipment for building and construction	20 to 35
Other movable property	20 to 35

The amortization period for goodwill ranges from 5 to 10 years. The amortization period for copyrights, patents, trademarks, designs, models, know-how or similar rights ranges from five to seven years.

**Relief for Losses.** Losses may be carried forward for 10 years. Losses may not be carried back.

**Groups of Companies.** Resident companies may use group consolidation if one company owns at least 90% of the shares in another company or if at least 90% of the shares in a company are owned by companies that are members of the same tax-consolidated group.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on most goods sold in Iceland and most services rendered in Iceland	
Standard rate	24.5
Lower rate for hotels, books and publications, food products, heating of houses and road tolls	7
Tax on industrial activities; levied on operating revenue	0.08
Social security contributions, paid by the employer on gross payroll	5.34

### **E. Foreign-Exchange Controls**

Nonresidents may directly invest in most industries in Iceland, but they must notify the central bank of such investments. The fishing industry is the principal industry in which investments by nonresidents are limited. Nonresidents may not own a majority in such companies. Proceeds from sales of investments and profits may be remitted freely.

### **F. Treaty Withholding Tax Rates**

	<b>Dividends</b>		<b>Interest</b>	<b>Royalties</b>
	<b>A (a)</b>	<b>B</b>		
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Belgium	5	15	0 (i)	0
Canada	5	15	0 (i)	0/10 (b)
China	5 (c)	10	0 (i)	10
Czech Republic	5 (c)	15	0	10
Denmark (d)	0	15	0	0
Estonia	5 (c)	15	0 (i)	5/10 (e)
Faroe Islands (d)	0	15	0	0
Finland (d)	0	15	0	0
France	5	15	0	0
Germany	5 (c)	15	0	0
Greenland	5 (c)	15	0	15
Hungary	5 (c)	10	0	10
Ireland	5 (c)	15	0	0/10 (b)
Latvia	5 (c)	15	0 (i)	5/10 (e)
Lithuania	5 (c)	15	0 (i)	5/10 (e)
Luxembourg	5 (c)	15	0	0
Malta	5	15	0	5
Netherlands	0	15	0	0
Norway (d)	0	15	0	0
Poland	5 (c)	15	0	10
Portugal	10 (c)	15	0 (i)	10
Russian Federation	5 (c)	15	0	0
Slovak Republic	5 (c)	10	0	10
Spain	5 (c)	15	0 (j)	5
Sweden (d)	0	15	0	0
Switzerland	5 (c)	15	0	0
United Kingdom	5	15	0	0
United States	5	15	0	0
Vietnam	10 (c)	15	0 (i)	0
Nontreaty countries	15	10/15 (f)	0 (g)	18/26 (h)

- A Qualifying companies.  
 B Individuals and other companies.
- (a) Unless indicated otherwise, the rate applies to corporate shareholders with ownership of at least 10%.
- (b) The 0% rate applies to copyrights (except for films and similar items), computer software, patents and know-how. The 10% rate applies to other royalties.
- (c) The rate applies to corporate shareholders with ownership of at least 25%.
- (d) These are the rates under the Nordic Convention.
- (e) The lower rate applies to equipment leasing.
- (f) The 10% rate applies to individuals; the 15% rate applies to companies.
- (g) A 10% withholding tax is imposed on interest paid to nonresidents unless, on application, the local tax director grants an exemption from withholding tax. Alternatively, the withholding tax may be refunded.
- (h) Royalties paid to nonresidents are subject to withholding tax. The 18% rate applies to companies; the 26% rate applies to partnerships. The net royalties (gross royalties less expenses) are normally included in ordinary income and taxed at the general corporate income tax rate unless a tax treaty provides a reduced rate.
- (i) Under the Icelandic tax law, interest paid to nonresidents is not taxed. However, under the double tax treaties between Iceland and Belgium, Canada, China, Estonia, Latvia, Lithuania, Portugal and Vietnam, the source state may impose a 10% tax on interest. As a result, these treaty countries may impose a 10% withholding tax on interest paid to residents of Iceland.
- (j) Under the Icelandic tax law, interest paid to nonresidents is not taxed. However, under the double tax treaty between Iceland and Spain, the source state may impose a 5% tax on interest. As a result, Spain may impose a 5% withholding tax on interest paid to residents of Iceland.

A tax treaty with Italy awaits ratification.

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**A. At a Glance**

Resident Company Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	20 (a)(b)
Branch Tax Rate (%)	40 (a)(c)
Withholding Tax (%) (a)	
Dividends	0
Interest	
Paid to Domestic Companies	20 (a)
Paid to Foreign Companies	20 (a)(d)
Royalties from Patents, Know-how, etc.	10/20 (a)(e)
Technical Services Fees	10/20 (a)(e)
Branch Remittance Tax	0

## Net Operating Losses (Years)

Carryback	0
Carryforward	8 (f)

- (a) For the income year ending 31 March 2008, the rates listed above for corporate income tax, capital gains tax and the withholding taxes are increased by a surcharge equal to 10% of such taxes in the case of resident companies. Income tax, capital gains and the withholding taxes for foreign companies are increased by a surcharge equal to 2.5% of such taxes. However, no surcharge is levied on resident and foreign companies if the net income does not exceed Rs. 10 million. In addition, for the income year ending 31 March 2008, the tax payable by companies is increased by a cess, which is imposed at a rate of 3% of the tax payable, inclusive of the surcharge (as applicable). Also, for the income year ending 31 March 2008, marginal relief is available. As a result of this relief, for a company having net income exceeding Rs. 10 million, the net amount payable as income tax and the surcharge may not exceed the total amount payable as income tax on total income of Rs. 10 million by more than the amount of income that exceeds Rs. 10 million.
- (b) See Section B.
- (c) For exceptions to this basic rate, see Section B.
- (d) This rate applies to interest on monies borrowed, or debts incurred, in foreign currency. Other interest is taxed at a rate of 40% (plus a surcharge of 2.5%, as applicable, and a 3% cess).
- (e) The 10% rate (plus the 2.5% surcharge, as applicable, and the 3% cess) applies to royalties and technical services fees paid to foreign companies in accordance with agreements entered into on or after 1 June 2005. For payments to foreign companies under agreements entered into on or after 1 June 1997, but before 1 June 2005, the rate is 20% (plus the 2.5% surcharge, as applicable, and the 3% cess). However, if a royalty or technical services fees agreement entered into on or before 31 March 2003 is not approved by the central government and if it is not in accordance with the Industrial Policy, the royalties are taxed on a gross basis at a rate of 40% (plus the 2.5% surcharge, as applicable, and the 3% cess). In addition, if a nonresident with a permanent establishment or fixed place of business in India enters into a royalty or technical service fees agreement after 31 March 2003 and if the royalties or fees paid under the agreement are effectively connected to such permanent establishment or fixed place, the payments are taxed on a net income basis at a rate of 40% (plus the 2.5% surcharge, as applicable, and the 3% cess).
- (f) Unabsorbed depreciation relating to the income year ending 31 March 2002 and future years may be carried forward indefinitely to offset taxable profits in subsequent years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** An Indian resident company is subject to tax on its worldwide income, unless the income is specifically exempt. A company not resident in India is subject to Indian tax on Indian-source income and on income received in India. Depending on the circumstances, certain income may be deemed to be Indian-source income. Companies incorporated in India are resident in India for tax purposes, as are companies incorporated outside India, if the control and management of their affairs is located wholly in India.

**Rates of Corporate Tax.** For the income year ending 31 March 2008, domestic resident companies are subject to tax at a basic rate of 30%. In addition, a 10% surcharge (for details regarding the surcharge, see footnote [a] in Section A) and a 3% cess is imposed on the income tax of such companies. This results in an effective corporate tax rate of 33.99% on the total income. Long-term capital gains are taxed at special rates (see *Capital Gains* below).

For foreign companies, the effective tax rate is 42.23% (basic rate of 40% plus the 2.5% surcharge and the 3% cess). A rate of 10.5575% (basic rate of 10% plus the 2.5% surcharge and the 3%



cess) applies to royalties and technical services fees paid to foreign companies in accordance with agreements entered into after 1 June 2005. A rate of 21.115% (basic rate of 20% plus the 2.5% surcharge and the 3% cess) applies to gross amounts of the following: taxable interest from foreign-currency loans; and royalties and fees for technical services paid in accordance with agreements entered into after 31 May 1997 but before 1 June 2005. For payments in accordance with agreements entered into before 1 June 1997, the rate is 31.6725% (basic rate of 30% plus the 2.5% surcharge and the 3% cess) if the royalty or technical services fees agreement is approved by the central government or if it is in accordance with the Industrial Policy. If a nonresident with a permanent establishment or fixed place of business in India enters into a royalty or technical services fees agreement after 31 March 2003 and if the royalties or fees paid under the agreement are effectively connected to such permanent establishment or fixed place, the payments are taxed on a net income basis at a rate of 42.23% (basic rate of 40% plus the 2.5% surcharge and the 3% cess).

**Tax Incentives.** Subject to prescribed conditions, the following tax exemptions and deductions are available to companies with respect to business carried on in India:

- A 10-year tax holiday equal to 100% of the taxable profits is available to undertakings or enterprises engaged in the following: developing, maintaining or operating infrastructure facilities (roads, toll roads, bridges, rail systems, highway projects, including housing or other activities that are integral parts of the highway projects, water supply projects, water treatment systems, irrigation projects, sanitation and sewerage systems, solid waste management systems, ports, airports, inland waterways, inland ports or navigational channels in the sea) if the undertaking begins to maintain or operate the infrastructure facility on or after 1 April 1995; providing basic or cellular telecommunication services, including radio paging, domestic satellite services, and network of trunking, broadband network and internet services, if the undertaking begins to provide such services during the period of 1 April 1995 through 31 March 2005 (for the provision of telecommunication services, a deduction of 100% is available for the first 5 years and 30% for the subsequent 5 years); developing, maintaining or operating industrial parks during the period of 1 April 1997 through 31 March 2009 or special-economic zones notified after 1 April 2005; power generation or distribution during the period of 1 April 1993 through 31 March 2010; reconstruction or revival of a power generating plant, if the undertaking is set up on or before 31 March 2008; laying and operating a cross-country natural gas distribution network on or after 1 April 2007; and substantial renovation or modernization (at least 50% increase in book value of plant and machinery) of existing transmission or distribution lines during the period of 1 April 2004 through 31 March 2010. The company may choose any 10 consecutive years within the first 15 years (10 out of 20 years in certain circumstances) for the period of tax holiday. However, the 10-year tax holiday for an enterprise or an undertaking engaged in development of infrastructure facilities, industrial parks and special-economic zones is available only if a "person" (this term includes a company, an individual and certain others) makes the investment and the same person carries out the development (civil construction) work. Effective

from 1 April 2007, such tax holiday is not available to an undertaking or enterprise that is transferred in an amalgamation or demerger after 31 March 2007. This new measure applies to the 2008-09 fiscal year and future years.

- A 7-year tax holiday equal to 100% of taxable profits for an undertaking that begins commercial production or refining of mineral oil.
- A 5-year tax holiday equal to 50% of profits and gains derived from the business of building, owning and operating multiplex theaters or convention centers if such structures are constructed during the period of 1 April 2002 through 31 March 2005 and, in the case of multiplex theaters, if no such structure is located within the municipal jurisdiction of the cities of Chennai, Delhi, Kolkata or Mumbai.
- A 5-year tax holiday equal to 100% of profits and gains derived from the business of a hotel or the business of building, owning and operating a convention center, located in the National Capital Territory of Delhi or in the districts of Faridabad, Gautam Budh, Nagar, Ghaziabad or Gurgaon, during the period of 1 April 2007 through 31 March 2010.
- A 10-year tax holiday equal to 100% of taxable profits for companies carrying on scientific research and development that are registered in India and approved by the prescribed authority after 31 March 2000 but before 1 April 2012. A 5-year tax holiday is granted for these activities if the company was approved before 1 April 1999. Approvals after 31 March 2000 are being granted only to companies that have met certain stringent conditions, which are included in detailed rules. Such approvals are granted for an initial period of 3 years and are renewable thereafter.
- A deduction of 100% of taxable profits for undertakings developing and constructing approved housing projects begun after 1 October 1998 and approved before 31 March 2007, subject to certain conditions.
- A 10-year tax holiday equal to 100% of taxable profits for the first 5 years and 30% of taxable profits for the following 5 years for an undertaking establishing and operating a cold chain facility for agricultural produce if the undertaking begins to operate such facility on or after 1 April 1999 but before 1 April, 2004.
- A 5-year tax holiday equal to 100% of taxable profits derived from operating and maintaining a hospital that has at least 100 beds in a rural area if such hospital is constructed during the period of 1 October 2004 through 31 March 2008 and if it satisfies other conditions.
- A 10-year tax holiday equal to 100% of taxable profits for the first 5 years and 30% of taxable profits for the next 5 years from the business of processing, preserving and packaging of fruits or vegetables or from the integrated business of handling, storing and transporting food grains for new undertakings that begin to operate on or after 1 April 2001.
- A tax deduction equal to 100% of profits derived from exports of articles, things or computer software by the following types of undertakings: projects located in free-trade zones (FTZs); technology parks for hardware and software (HTPs/STPs) or special-economic zones (SEZs); and 100% export-oriented undertakings (EOUs). The deduction is calculated by applying to taxable income the ratio of export turnover to total turnover.

The deduction is available up to the 2008-09 income year. However, undertakings established in SEZs on or after 1 April 2002 are entitled to a deduction of 100% for the first 5 years and 50% for the following 2 years. For the following 3 years, the availability of the deduction is contingent on the allocation of the profits to a specified reserve and the use of such amounts in the prescribed manner. The deduction is capped at 50% of the profits allocated to the reserve. However, these deductions are not available to undertakings established in SEZs on or after 1 April 2005. The above deductions are also available to companies engaged in cutting and polishing of precious and semiprecious stones.

- A 15-year tax holiday with respect to profits derived from export activities by units that begin to manufacture or produce articles or things or provide services in SEZs, effective from the income year beginning 1 April 2005. For the first 5 years of the tax holiday, a tax deduction equal to 100% of the profits derived from exports of articles, things or prescribed services is available. For the following 5 years, a tax deduction equal to 50% of the profits and gains is available. For the next 5 years, a tax deduction equal to 50% of the profits and gains is available, subject to the allocation of the profits to a specified reserve and the use of such amounts in the prescribed manner.
- A 10-year tax deduction equal to 100% of profits derived from an undertaking that begins the manufacturing or production of specified goods in Sikkim and Northeastern states. This deduction is also available if an undertaking manufacturing the specified goods, undertakes a substantial expansion that involves an increase in investment in plant and machinery by at least 50% of the book value of plant and machinery (computed before any depreciation).
- A 10-year tax holiday equal to 100% of taxable profits for the first 5 years and 30% of taxable profits for the following 5 years for an undertaking that begins the manufacturing or production of specified goods in the states of Himachal Pradesh and Uttaranchal. This deduction is also available if an undertaking manufacturing the specified goods undertakes a substantial expansion that involves an increase in investment in plant and machinery by at least 50% of the book value of plant and machinery (computed before any depreciation).
- A 5-year tax holiday equal to 100% of the profits and gains from the business of collecting and processing or treating of biodegradable waste for the following purposes: generating power; producing bio-fertilizers, bio-pesticides or other biological agents; producing bio-gas; or making pallets or briquettes for fuel or organic manure. The tax holiday begins in the year of the commencement of the business.

**Minimum Alternative Tax.** The minimum alternative tax (MAT) applies to a company if the tax payable by the company on its total income, as computed under the Income Tax Act, is less than 10% of its book profit. In such cases, MAT is payable at a rate of 11.33% (basic rate of 10% plus surcharge of 10% and cess of 3%) of adjusted book profit. The surcharge applies only if the book profit exceeds Rs. 10 million. MAT is levied on companies only and does not apply to firms or other persons. In computing book profit for MAT purposes, certain positive and negative adjustments must be made to the net profit shown in the books of account.

The net profit is increased by the following items:

- Amount of income tax paid or payable and the provision for such tax;
- Amount carried to any reserves;
- Amount allocated to provisions for liabilities other than ascertained liabilities;
- Amount allocated to provision for losses of subsidiary companies;
- Depreciation attributable to the revaluation of assets;
- Amount of dividend paid or proposed; and
- Amount of expenditure related to exempt income.

The net profit is decreased by the following items:

- Amount withdrawn from any reserves or provisions if such amount is credited in the profit-and-loss statement.
- Amount of losses carried forward (excluding depreciation) or unabsorbed depreciation, whichever is less, according to the books of account.
- Profits derived from the export of computer software, film software and certain other items.
- Profits of “sick” industrial companies. These are companies that have accumulated losses equal to or exceeding their net worth at the end of a financial year and are declared to be sick by the Board for Industrial and Financial Reconstruction.
- Income that is exempt from tax.

MAT paid by companies for income years beginning on or after 1 April 2005 can be carried forward and set off against income tax payable in subsequent years under the normal provisions of the Income Tax Act for a period of seven years. The maximum amount that can be set off against regular income tax is equal to the difference between the tax payable on the total income as computed under the Income Tax Act and the tax that would have been payable under the MAT provisions for that year.

The MAT provisions do not apply to income that is earned on or after 1 April 2005 from a business carried on or services rendered by an entrepreneur in a unit of a special-economic zone or by a developer in a special-economic zone.

A report from a chartered accountant certifying the amount of book profits must be obtained.

### **Capital Gains**

*General.* The Income Tax Act prescribes special tax rates for the taxation of capital gains. Gains derived from transfers of capital assets are subject to tax as capital gains and are deemed to be the income in the year of the transfer.

The tax rate at which capital gains are taxable in India depends on whether the capital asset transferred is a short-term capital asset or a long-term capital asset. A short-term capital asset is defined as a capital asset that is held for less than 36 months immediately before the date of its transfer. However, if the capital asset constitutes shares in a company, other securities listed on a recognized stock exchange in India, units of a mutual fund or specified zero-coupon bonds, a 12-month period replaces the 36-month period. A capital asset that is not a short-term capital asset is a long-term capital asset.

*Capital Gains on Specified Transactions on Which Securities Transaction Tax Has Been Paid.* Effective from 1 October 2004, long-term capital gains derived from the transfer of equity shares or units of an equity-oriented fund on a recognized stock exchange in India or from the transfer of units of an equity-oriented fund to a mutual fund are exempt from tax if Securities Transaction Tax (STT) has been paid on the transaction. For further details regarding STT, see Section D.

Short-term capital gains derived from the transfer of equity shares or units of an equity-oriented fund on a recognized stock exchange in India or from the transfer of units of an equity-oriented fund to a mutual fund are taxable at a reduced rate of 10% plus surcharge, as applicable, and cess, if STT has been paid on the transaction.

The tax regime described above applies to all types of taxpayers, including Foreign Institutional Investors (FIIs).

*Capital Gains on Transactions on Which STT Has Not Been Paid.* For the sale of shares and units of a mutual fund that has not been subject to STT and for capital gains derived from the transfer of a capital asset that is not a specified security, the following are the capital gains tax rates (excluding the applicable surcharge and education cess).

Type of Taxpayer	Short-Term Capital Gains Rate (%)*	Long-Term Capital Gains Rate (%)*
Resident companies	30	20
FIIs	30	10
Nonresidents other than FIIs	40	20

\* The above rates are subject to a surcharge and cess. The surcharge is imposed at a rate of 10% for resident companies and at a rate of 2.5% for nonresident companies, if the net income of the company exceeds Rs. 10 million. The rate of the cess is 3%.

*Computational Provisions.* For assets that were acquired on or before 1 April 1981, the market value on that date may be substituted for actual cost in calculating gains. The acquisition cost is indexed for inflation. However, no inflation adjustment is allowed for bonds and debentures. For the purpose of calculating capital gains, the acquisition cost of bonus shares is deemed to be zero. Nonresident corporations compute capital gains on shares and debentures in the currency used to purchase such assets, and consequently they are protected from taxation on fluctuations in the value of the Indian rupee. As a result, the benefit of indexation is not available to nonresident corporations with respect to the computation of capital gains on shares.

*Slump Sales, Demergers and Amalgamations.* Special rules apply to “slump sales,” “demergers” and “amalgamations” (for a description of amalgamations, see Section C).

A “slump sale” is the transfer of an undertaking for a lump-sum consideration without assigning values to the individual assets and liabilities. The profits derived from such sales are taxed as long-term capital gains if the transferred undertaking has been held for more than 36 months.

Capital gains equal the difference between lump-sum consideration and the net worth of the undertaking. For purposes of com-

puting capital gains, the net worth of the undertaking equals the difference between the value of the total assets (the sum of the tax-depreciated value of assets that are depreciable for income tax purposes and the book value of other assets) of the undertaking or division and the book value of liabilities of such undertaking or division.

With respect to companies, a “demerger” is the transfer of an undertaking by one company (demerged company) to another company (resulting company) pursuant to a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956, provided that certain conditions are satisfied. Subject to certain conditions, transfers of capital assets in a demerger are not considered to be transfers subject to capital gains tax if the resulting company is an Indian company.

In a demerger, the shareholders of the demerged company are issued shares in the resulting company in proportion to their existing shareholdings in the demerged company based on a predetermined share-issue ratio. This issuance of shares by the resulting company to the shareholders of the demerged company is exempt from capital gains tax.

Like demergers, if certain conditions are satisfied, transfers of capital assets in amalgamations are not considered to be transfers subject to capital gains tax, provided the amalgamated company is an Indian company.

In an amalgamation, shareholders of the amalgamating company are usually issued shares in the amalgamated company in exchange for their existing shareholding in the amalgamating company based on a predetermined share-exchange ratio. Such exchange of shares is exempt from capital gains tax if the following conditions are satisfied:

- The transfer is made in consideration of the allotment of shares in the amalgamated company; and
- The amalgamated company is an Indian company.

*Depreciable Assets.* To compute capital gains on sales of assets on which depreciation has been allowed, the sales proceeds of the assets are deducted from the declining-balance value of the classes of assets (including additions during the year) of which the assets form a part. If the sales proceeds exceed the declining-balance value, the excess is treated as short-term capital gain. Otherwise, no capital gain results from sales of such assets even if the sales proceeds for a particular asset are greater than the cost of the asset.

*Nondepreciable Assets.* For nondepreciable assets, such as land, gains are computed in accordance with the rules described below.

If the asset is held for 36 months or more, the capital gain is considered a long-term capital gain, which equals the net sale consideration less the indexed cost of acquisition. The gain on an asset held for less than 36 months is considered a short-term capital gain, which equals the net sale consideration less the acquisition cost. For shares, listed securities and zero-coupon bonds, a 12-month period replaces the 36-month period.

The transfer of a capital asset by a parent company to its wholly owned Indian subsidiary or the transfer of a capital asset by a wholly owned subsidiary to its Indian parent company is exempt from capital gains tax, subject to the fulfillment of certain conditions.

**Administration.** The Indian fiscal year runs from 1 April to 31 March. All companies must file tax returns by 31 October. Tax is payable in advance on 15 June, 15 September, 15 December and 15 March. Any balance of tax due must be paid on or before the date of filing the return. The carryforward of losses is not allowed if a return is filed late.

**Withholding Taxes.** Domestic companies are subject to the following withholding taxes.

Type of Payment	Rate %(a)
Dividends	0
Interest	20
Commissions from sales of lottery tickets	10
Other specified commissions	10 (b)
Payments to contractors (other than under advertising contracts)	2
Payments to subcontractors	1
Rent	10/20 (c)
Income from lotteries and horse races	30
Professional and technical service fees	10 (b)
Royalties	10 (b)
Income from units of the UTI and mutual funds	10
Payments of compensation to residents for the compulsory acquisition of certain immovable property	10
Other income	20

(a) For the income year ending 31 March 2008, the 10% surcharge, as applicable, and the 3% cess are imposed on the above withholding taxes.

(b) This rate is effective from 1 June 2007.

(c) The general rate of withholding tax for rental payments made to companies is 20% (plus applicable surcharge and cess). However, for equipment rental, the rate is 10% (plus applicable surcharge and cess).

Nonresident companies are subject to the following withholding taxes.

Type of Payment	Rate %(a)
Dividends	0
Interest on foreign-currency loans	20
Royalties and technical service fees	10 (b)
Rent	40
Income from units of mutual funds	0
Income from lotteries and horse races	30
Long-term capital gains other than exempt gains	20
Other income	40

(a) For the income year ending 31 March 2008, the 2.5% surcharge, as applicable, and the 3% cess are imposed on the above withholding taxes.

(b) See footnote (e) to Section A.

**Dividends.** Dividends paid by resident companies are exempt from tax in the hands of the recipients. However, resident companies must pay a dividend distribution tax (DDT) at a rate of 16.995%

(basic rate of 15% plus the 10% surcharge and the 3% cess) on dividends declared, distributed or paid by them on or after 1 April 2003. The DDT paid is a nondeductible expense.

**Foreign Tax Relief.** Foreign tax relief for the avoidance of double taxation is governed by tax treaties with several countries. If no such agreements exist, resident companies may claim a foreign tax credit for the foreign tax paid. The amount of the credit is the lower of the Indian tax payable on the income that is taxed twice and the foreign tax paid.

### C. Determination of Trading Income

**General.** Business-related expenses are deductible; capital expenditures (other than on scientific research) and personal expenses may not be deducted. The deductibility of head office expenses for nonresident companies is limited.

Income derived from operations with respect to mineral oil, and certain other income derived by nonresidents are taxed on a deemed-profit basis. Under an optional tonnage tax scheme, shipping profits derived by Indian shipping companies are taxed on a deemed basis.

**Inventories.** In determining trading income, inventories may, at the taxpayer's option, be valued either at cost or the lower of cost or replacement value. The last-in, first-out (LIFO) method is not accepted.

**Provisions.** Provisions for taxes (other than income tax [including fringe benefit tax and dividend distribution tax] and wealth tax, which are not deductible expenses) and duties, bonuses, leave salary and interest on loans from financial institutions and scheduled banks are not deductible on an accrual basis unless payments are made before the due date of filing of the income tax return. If such payments are not made before the due date of filing of the income tax return, a deduction is allowed only in the year of actual payment. General provisions for doubtful trading debts are not deductible until the bad debt is written off in the accounts, but some relief is available for banks and financial institutions with respect to nonperforming assets. Interest payable on loans, borrowings or advances that is converted into loans, borrowings or advances may not be claimed as a deduction for tax purposes.

**Depreciation Allowances.** Depreciation is calculated using the declining-balance method and is allowed on classes of assets. Depreciation rates vary according to the class of assets. The following are the general rates.

Asset	Rate (%)
Plant and machinery	15*
Buses, lorries and motor taxis used in a rental business	30
Cars other than those used in the business of running them on hire	15
Buildings	10
Furniture and fittings	10

\* Subject to fulfillment of prescribed conditions, accelerated depreciation equal to 20% of the actual cost is allowed in the first year with respect to plant and machinery (other than ships or aircrafts) acquired or installed after 31 March 2005.



Depreciation is also allowed on intangibles, such as know-how, patents, copyrights, trademarks, licenses, franchises or other similar commercial rights. These items are depreciated using the declining-balance method at a rate of 25%.

Special rates apply to certain assets, such as 60% for computers and computer software, 80% for energy-saving devices and 100% for air or water pollution-control equipment. Additions to assets that are used for less than 180 days in the year in which they are acquired and placed in service qualify for depreciation in that year at one-half of the normal rates. On the sale or scrapping of an asset within a class of assets, the declining-balance value of the class of assets is reduced by the sales proceeds (for details concerning the capital gains taxation of such a sale, see Section B).

Companies engaged in power generation or in power generation and distribution may elect to use the straight-line method of depreciation at specified rates.

**Relief for Losses.** Business losses, excluding losses resulting from unabsorbed depreciation of business assets (but see below), may be carried forward to be set off against taxable income derived from business in the following eight years, provided the income tax return for the year of loss is filed on time. For closely held corporations, a 51% continuity of ownership test must also be satisfied.

Unabsorbed depreciation may be carried forward indefinitely to be set off against taxable income of subsequent years.

Losses under the heading “Capital Gains” (that is, resulting from transfers of capital assets) may not be set off against other income, but may be carried forward for eight years to be set off against capital gains. Long-term capital losses may be set off against long-term capital gains only.

*Amalgamations and Demergers.* Special rules apply to “amalgamations” and “demergers” (for a description of “demergers,” see Section B). With respect to companies, an “amalgamation” is the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies that merge are referred to as the “amalgamating company or companies” and the company with which they merge, or which is formed as a result of the merger, is known as the “amalgamated company”) that meet certain specified conditions.

An amalgamated company may claim the benefit of the carry-forward of business losses and unabsorbed depreciation of the amalgamating companies if the following conditions are satisfied:

- Shareholders holding at least 75% of the shares of the amalgamating company become shareholders of the amalgamated company.
- The amalgamating company owns an industrial undertaking, ship or hotel.
- The amalgamating company has been engaged in business for at least three years and either incurred the accumulated business loss or accumulated the unabsorbed depreciation during such period.
- As of the date of amalgamation, the amalgamating company has continuously held at least 75% of the book value of the fixed assets that it held two years before the date of the amalgamation.

- At least 75% of the book value of fixed assets acquired from the amalgamating company is held continuously by the amalgamated company for a period of five years.
- The amalgamated company continues the business of the amalgamating company for at least five years from the date of amalgamation.
- An amalgamated company acquiring an industrial undertaking of the amalgamating company through an amalgamation, must achieve a level of production that is at least 50% of the installed capacity of the undertaking before the end of four years from the date of amalgamation and continue to maintain this minimum level of production until the end of the fifth year from the date of amalgamation. For this purpose, "installed capacity" is the capacity of production existing on the date of amalgamation.
- Additional specified conditions to ensure that the amalgamation is for genuine business purposes.

In the event of noncompliance with any of the above conditions, any business loss carryforwards and unabsorbed depreciation that has been set off by the amalgamated company against the company's taxable income is treated as its income for the year in which the failure to fulfill any of the above occurs.

**Groups of Companies.** The income tax law does not provide for the consolidation of income or common assessment of groups of companies. Each company, including a wholly owned subsidiary, is assessed separately.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Securities Transaction Tax (STT); payable on transactions in equity shares, derivatives and units of an equity-oriented fund on a recognized stock exchange, as well as on the sale of units of an equity-oriented fund to a mutual fund the tax is imposed on the value of the transaction, which varies according to the type of transaction;	
Delivery based transactions in equity shares or in units of equity-oriented fund	
Buyer	0.125
Seller	0.125
Sale of units of an equity-oriented fund to a mutual fund; tax paid by seller	0.25
Nondelivery-based transactions in equity shares or in units of an equity-oriented fund; tax paid by seller	0.025
Derivatives (futures and options); tax paid by seller	0.017
Central value-added tax (CENVAT), on goods manufactured in India; levied by the central government; rates exclusive of education cess	8/16/32
Customs duty, on goods imported into India; levied by the central government	Various

Nature of Tax	Rate (%)
Sales tax; generally imposed on sales of goods; levied either by the central government (central sales tax) on interstate sales or the state government (state sales tax) on intrastate sales	Various
Luxury tax; levied by certain states on notified items (items officially prescribed by the relevant authority)	Various
Works contract tax; on goods for which title is transferred during execution of work contracts (for example, contracts for the construction, fabrication or installation of plant and machinery)	Various
Lease tax on contracts involving transfer of rights to use goods	Various
Octroi/entry tax; levied by certain municipalities and states on the entry of goods into municipal jurisdiction or state for use, consumption or sale	Various
Research and development cess; imposed on payments made for the import of technology	5
Net assets tax, on specified assets (such as precious metals, urban land and buildings not used in the business and motor cars), net of debt secured by the assets; tax is imposed on the taxable value in excess of Rs. 1.5 million	1
Stamp duties, levied by each state on specified documents and transactions, including property transfers	Various
Social security contributions, paid by the employer for medical insurance plans for certain categories of employees and for minimum retirement benefit plans	Various
Service tax, on certain services, such as specified banking and other financial services, insurance, scientific or technical consultancy, port services and services performed by consulting engineers and management consultants; rate includes education cess	12.36
Fringe Benefit Tax (FBT); payable by covered employers on benefits provided or deemed to have been provided to past and present employees; FBT may apply even if the benefit is not provided directly by the employer; only 5%, 20% or 50% of the cost of specified fringe benefits are subject to FBT; payments of FBT may not be deducted from taxable income; FBT is payable regardless of whether the employer has taxable income in India; FBT is payable by domestic and foreign companies; however, foreign companies are subject to FBT only on expenses attributable to their	

Nature of Tax	Rate (%)
Indian operations; expenses may not be segregated between employees and non-employees for purposes of computing the FBT; FBT is payable quarterly; rates including surcharge and education cess (see Section B)	
Domestic companies	33.99
Foreign companies	31.6725
Banking Cash Transaction Tax (BCTT); payable on the value of taxable banking transactions; for companies, these transactions include transactions involving cash withdrawals from accounts other than savings accounts or the conversion to cash of one or more term deposits, on maturity or under other circumstances, exceeding a total of Rs. 100,000 on a single day; BCTT is not payable on the amount of term deposits credited to an account with the bank; the bank is required to collect and pay over the BCTT to the tax authorities	0.1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** All cross-border transactions with non-residents are subject to foreign-exchange controls contained in the Foreign Exchange Management Act. The rupee is fully convertible for trade and current account purposes. Except for certain specified restrictions, foreign currency may be freely purchased for trade and current account purposes. In general, such purchases must be made at the market rate. Capital account transactions are not permitted unless they are specifically allowed and the prescribed conditions are satisfied. Cross-border transactions that are specifically allowed include the following: all remittances abroad that require prior approval arrangements, such as joint venture and technical collaboration agreements; and the remittance of interest, dividends, service fees and royalties. Repatriation of capital is also freely permitted for investment approved on a repatriable basis. However, for sales of Indian assets, the terms of sale require the approval of the exchange-control authorities, and certain other conditions must be satisfied.

**Transfer Pricing.** The Income Tax Act includes detailed transfer-pricing regulations. Although the guidelines are broadly in line with the principles set out by the Organization for Economic Cooperation and Development (OECD), key differences exist.

Under these regulations, income and expenses, including interest payments, with respect to international transactions between two or more associated enterprises (including permanent establishments) must be determined using arm's length prices. The transfer-pricing regulations also apply to cost-sharing arrangements.

The transfer-pricing regulations contain definitions of various terms, including "associated enterprise," "arm's length price," "enterprise," "international transaction" and "permanent establishment." It specifies methods for determining the arm's length price. The following are the specified methods:

- Comparable uncontrolled price method;
- Resale price method;
- Cost-plus method;
- Profit split method;
- Transactional net margin method; and
- Any other method prescribed by the Central Board of Direct Taxes (CBDT).

The CBDT has issued the regulations for applying these methods to determine the arm's length price.

The transfer-pricing regulations require each person entering into an international transaction to maintain prescribed documents and information regarding a transaction. Each person entering into an international transaction must arrange for an accountant to prepare a report and furnish it to the Tax Officer by the due date for filing the corporate tax return, which is 31 October.

A tax officer may make an adjustment with respect to an international transaction, if the officer determines that certain conditions exist, including any of the following:

- The price is not at arm's length;
- The prescribed documents and information have not been maintained;
- The information or data on the basis of which the price was determined is not reliable; or
- Any information or documents requested by the tax officer have not been furnished.

Stringent penalties (up to 2% of the transaction value) are imposed for noncompliance with the procedural requirements and for understatement of profits.

**Debt-to-Equity Rules.** India does not currently impose mandatory capitalization rules. However, banks and financial corporations must comply with capital adequacy norms.

## F. Treaty Withholding Tax Rates

For treaty countries, the rates reflect the lower of the treaty rate and the rate under domestic tax laws on outbound payments.

	Dividends (k)	Interest	Approved Royalties (i)
	%	%	%
Armenia	0	10 (b)	10
Australia	0	15	15 (g)(o)
Austria	0	10	10
Bangladesh	0	10 (b)	10
Belarus	0	10 (b)	15 (o)
Belgium	0	15 (b)	10 (c)
Brazil	0	15 (b)	15 (h)(o)
Bulgaria	0	15 (b)	20 (e)(o)
Canada	0	15 (b)	15 (g)(o)
China	0	10 (b)	10
Cyprus	0	10 (b)	15 (o)
Czech Republic	0	10 (b)	10
Denmark	0	15 (b)	20 (o)
Egypt (l)	0	20 (a)(j)	20 (f)(j)(o)
Finland	0	10 (b)	15 (g)(o)
France	0	10 (b)	10 (c)
Germany	0	10 (b)	10

	<b>Dividends (k)</b>	<b>Interest</b>	<b>Approved Royalties (i)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Greece	0	20 (a)(j)	20 (f)(j)(o)
Hungary	0	10 (b)(c)(d)	10 (c)(m)
Indonesia	0	10 (b)	15 (o)
Ireland	0	10 (b)	10
Israel	0	10 (b)	10
Italy	0	10 (b)(m)	10 (m)(o)
Japan	0	10 (b)(n)	10 (n)(o)
Jordan	0	10 (b)	20 (o)
Kazakhstan	0	10 (b)	10
Kenya	0	15 (b)	20 (o)
Korea	0	15 (b)	15 (o)
Kyrgyzstan	0	10 (b)	15 (o)
Libya	0	20 (a)(j)	20 (f)(j)(o)
Malaysia	0	10 (a)	10
Malta	0	10 (b)	15 (o)
Mauritius	0	20 (a)(b)(j)	15 (o)
Mexico (p)	0	10 (b)	10
Mongolia	0	15 (b)	15 (o)
Morocco	0	10 (b)	10
Namibia	0	10 (b)	10
Nepal	0	15 (b)	15 (o)
Netherlands	0	10 (b)	10 (c)
New Zealand	0	10 (b)	10
Norway	0	15 (b)(d)	20 (c)(o)
Oman	0	10 (b)	15 (o)
Philippines	0	15 (b)	15 (o)
Poland	0	15 (b)	20 (f)(j)(o)
Portugal	0	10 (b)	10
Qatar	0	10 (b)	10
Romania	0	15 (b)	20 (f)(j)(o)
Russian Federation	0	10 (b)	10
Saudi Arabia	0	10 (n)	10 (n)
Singapore	0	15 (b)	15 (g)
Slovenia	0	10 (b)	10
South Africa	0	10 (b)	10
Spain	0	15 (b)	20 (c)(g)(o)
Sri Lanka	0	10 (b)	10
Sudan	0	10 (b)	10
Sweden	0	10 (b)	10
Switzerland	0	10 (b)	10
Syria	0	7.5 (b)	10
Tanzania	0	12.5 (b)	20 (o)
Thailand	0	20 (a)(b)(j)	15 (o)
Trinidad and Tobago	0	10 (b)	10
Turkey	0	15 (b)	15 (o)
Turkmenistan	0	10 (b)	10
Uganda	0	10 (b)	10
Ukraine	0	10 (b)	10
United Arab Emirates	0	12.5 (b)	10
United Kingdom	0	15 (b)	15 (g)(o)
United States	0	15 (b)	15 (g)(o)
Uzbekistan	0	15 (b)	15 (o)
Vietnam	0	10 (b)	10
Zambia	0	10 (b)	10
Nontreaty countries	0	20 (a)(j)	10/20 (f)(j)(o)

- (a) This rate applies to interest on monies borrowed, or debt incurred, in foreign currency. Other interest is taxed at a rate of 40% (plus the 2.5% surcharge, as applicable, and the 3% cess).
- (b) A reduced rate of 0% to 10% applies generally to banks and, in a few cases, to financial institutions, local authorities, political subdivisions and the government.
- (c) The rate is reduced under a most-favored nation clause.
- (d) This rate applies to interest on loans or debts created after the new treaty or supplementary protocol enters into force.
- (e) A 15% rate applies to royalties related to copyrights of literary, artistic or scientific works.
- (f) The 20% rate applies to royalties paid to foreign corporations under agreements that are approved by the government of India or are in accordance with the Industrial Policy and that are entered into after 31 May 1997. However, if the royalty agreement is not approved by the central government and if it is not in accordance with the Industrial Policy, the royalties are taxed on a gross basis at a rate of 40% (plus the 2.5% surcharge, as applicable, and the 3% cess). Royalties received in accordance with an agreement made after 31 March 2003 in connection with a permanent establishment or fixed place of business in India are taxed on a net basis at a rate of 40% (plus the 2.5% surcharge, as applicable, and the 3% cess).
- (g) A 10% rate applies to royalties relating to the use of industrial, commercial or scientific equipment and technical services ancillary and subsidiary to the application or use of such equipment.
- (h) A 25% rate applies to royalties paid for the use of trademarks.
- (i) Most of India's tax treaties also provide withholding tax rates for technical services fees. In most cases, the rates applicable to royalties also apply to technical services fees.
- (j) The rate is increased by the 2.5% surcharge, as applicable, and the 3% cess for the year ending 31 March 2008.
- (k) Under Indian domestic law, dividends declared or paid by Indian companies are exempt from tax in the hands of the recipients. However, Indian companies must pay dividend distribution tax at a rate of 16.995% (basic rate of 15% plus the 10% surcharge and the 3% cess) on dividends declared, distributed or paid by them.
- (l) The official name of Egypt is the United Arab Republic.
- (m) The tax rate applicable is effective from 1 April 2007.
- (n) The tax rate applies to payments made or credited after 1 April 2008.
- (o) Under the domestic tax law, royalties paid to foreign corporations under agreements entered into after 1 June 2005 that are approved by the government of India or are in accordance with the Industrial Policy and are taxable at a rate of 10% (plus the 2.5% surcharge, as applicable, and the 3% cess). For further details regarding the taxation of royalties, see Section B.
- (p) The India-Mexico income tax treaty was concluded on 10 September 2007, but it has not yet been ratified.

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*The Amendment of Law on General Rules of Tax was recently ratified by the House of Representatives and signed by the President of Indonesia. This amendment is effective from 1 January 2008. Changes contained in the amendment are reflected in this chapter. At the time of writing, the Indonesian government was expected to release draft amendments to the Income Tax and Value-Added Tax (VAT) Laws. To be enacted, the amendments must be ratified by the House of Representatives and signed by the President of Indonesia. The amendments to the Income Tax and VAT Laws are expected to be effective from 1 January 2009. Because of the possible changes to the Income Tax and VAT Laws resulting from the amendments mentioned above, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	– (b)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	15/20 (c)
Interest	15/20 (c)
Royalties from Patents, Know-how, etc.	15/20 (c)
Rent	
Land or Buildings	10 (d)
Land Transportation Vehicles	1.5 (e)
Other	4.5 (e)
Fees for Services	
Payments to Residents	
Payments for Goods and Services Financed by the Government or Local Government Budget	1.5



Construction Contracting Services	2 (f)
Construction Planning and Supervision	4 (f)
Oil and Gas Mining Industry and Support Services for Industry Other than Oil and Gas Mining	4.5
Technical and Management Services and Consulting Services Other than Construction Consultancy	4.5 (e)
Legal, Tax, Appraisal, Actuarial, Accounting, Design and Other Specified Services	4.5 (e)(g)
Contract Manufacturing, Investigation, Security, Event Organization and Packaging Services	3 (e)
Rental of Space or Time Slot in Mass Media, Outdoor Media or Other Media for Advertising Purposes, and Pest Control, Cleaning and Catering Services	1.5 (e)
Payments to Nonresidents	20 (h)
Branch Profits Tax	20 (i)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 to 10 (j)

- (a) This is the maximum progressive rate (see Section B).
- (b) See Section B for details concerning the taxation of capital gains.
- (c) A final withholding tax at a rate of 20% is imposed on payments to nonresidents. Tax treaties may reduce the tax rate. Certain dividends paid to residents are exempt from tax if prescribed conditions are satisfied. A 15% withholding tax is imposed on interest paid by nonfinancial institutions to residents. Interest paid by banks on bank deposits to residents is subject to a final withholding tax of 20%.
- (d) This is a final withholding tax imposed on gross rent from land or buildings.
- (e) This tax is considered a prepayment of income tax.
- (f) This tax is considered a prepayment of income tax, but it may be a final tax in limited circumstances.
- (g) This tax is considered a prepayment of income tax. Services subject to this tax include the following: design; support services in aviation and airport management; logging services; waste treatment services; labor supply services; brokerage and intermediary services; trading services with respect to commercial paper (except those performed by the stock exchange, the Indonesian Central Securities Depository [Kustodian Sentral Efek Indonesia, or KSEI] and the Indonesian Securities Clearing and Guarantee [Kliring Penjaminan Efek Indonesia, or KPEI]); custodian and depository handling services (except those performed by KSEI); dubbing services; and film-mixing services.
- (h) This is a final tax imposed on the gross amount paid to nonresidents. The rate may be reduced under double tax treaties.
- (i) This is a final tax imposed on the after-tax taxable income of a permanent establishment. The rate may be reduced under double tax treaties. The tax applies regardless of whether the income is remitted. The payment of this tax may be avoided if the profits are reinvested in Indonesia.
- (j) Losses incurred by certain businesses or incurred in certain areas may be carried forward for up to 8 or 10 years.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies incorporated or domiciled in Indonesia are subject to income tax on worldwide income, but a credit is available for income taxed overseas (see *Foreign Tax Relief* below). A company is domiciled in Indonesia if it is managed, controlled or has its head office in Indonesia. Branches of foreign companies are taxed only on those profits derived from activities carried on in Indonesia. However, income accruing from Indonesia to a foreign company having a permanent establishment in Indonesia is taxed as income of the permanent establish-

ment if the business generating the income is of a similar nature to the business of the permanent establishment. This follows the "force of attraction" principle.

**Rates of Corporate Tax.** The following rates of tax apply to Indonesian companies and foreign companies operating in Indonesia through a permanent establishment.

Taxable Income		Tax on Lower Amount Rp.	Rate on Excess %
Exceeding Rp.	Not Exceeding Rp.		
0	50,000,000	0	10
50,000,000	100,000,000	5,000,000	15
100,000,000	—	7,500,000	30

The after-tax profit of a permanent establishment is subject to a final tax at a rate of 20%. This tax rate may be reduced under double tax treaties. The tax applies regardless of whether the income is remitted to the head office. The payment of this tax may be avoided if the income is reinvested in Indonesia.

Tax incentives are granted to certain qualifying resident companies investing in certain types of businesses or regions. The tax incentives consist of the following:

- Accelerated depreciation and amortization.
- Carryforward of a tax loss for a period of 10 years, subject to the satisfaction of certain conditions.
- Reduced dividend withholding tax rate of 10% on dividends paid offshore or a lower tax rate prescribed by an applicable tax treaty.
- Investment allowance in the form of reduction of net income by 30% of the amount invested in land and buildings, and plant and equipment. This allowance may be claimed at a rate of 5% each year over a 6-year period.

To qualify for the above tax incentives, the investment must be a new investment or an investment for the purpose of expanding a current business. Under a government regulation, businesses in 15 industries may qualify for the tax incentives, including the following: food seasoning; textile and garment; pulp and paper (including carton and cardboard); industrial chemical substances; other chemical substances; rubber or rubber-made products; industrial products from porcelain; base iron metal and steel; other base metals (non-iron); machinery and accessories; electric motors including generators and transformers; electronics; land transportation; ship building and repair; and non iron basic metal. Alternatively, the investment may be made in certain industries in certain provinces and relate to certain products prescribed in the government regulation. This alternative prescribes nine industries including the following: seafood processing; processing of agricultural products; packaging; plastic goods; cement; and furniture. The prescribed provinces are generally outside Java. They are primarily the northeastern provinces and provinces located in Sulawesi. For the six-year period beginning with the granting of the tax incentives, certain restrictions apply to the use and transfer of fixed assets that are subject to the incentives. The incentives can be revoked if these rules are violated.

Special tax rates apply to the companies described below.

*Petroleum.* Petroleum companies are subject to tax at a flat rate ranging from 30% to 45%, depending on when their contracts were signed and approved. In addition, foreign petroleum companies are subject to a 20% withholding tax, which may be reduced by certain tax treaties, on their after-tax taxable income.

*Mining.* General mining companies are taxed at rates ranging from 30% to 45%, depending on the generation of their contracts with the Indonesian government. Certain contracts provide for escalating rates over the life of the project. The most recent mining contracts provide for taxation on the basis of current tax rates with no tax rate escalation provisions. Dividend withholding tax may be imposed at rates of 20% or 10% depending on the generation of the contract. These rates may be subject to reduction under certain tax treaties.

*Geothermal.* Geothermal companies are subject to income tax at a rate of 34%.

*Construction Companies.* In limited circumstances, construction companies are subject to a final tax at a rate of 2% of gross turnover.

*Construction Design or Supervision.* In limited circumstances, companies engaged in construction design or supervision, are subject to tax at a rate of 4% of their gross turnover.

*Foreign Drilling Companies.* Foreign drilling companies are subject to corporate income tax at a rate of 4.5% of their gross drilling income, as well as to a branch profit tax of 20% on their after-tax profit, which may be reduced by certain tax treaties.

*Nonresident International Shipping Companies and Airlines.* Nonresident international shipping companies and airlines are subject to tax at a rate of 2.64% of gross turnover.

**Capital Gains.** A 0.1% final withholding tax is imposed on proceeds of sales of publicly listed shares through the Indonesian stock exchange. An additional tax at a rate of 0.5% of the share value is levied on sales of founder shares associated with a public offering. Founder shareholders must pay the 0.5% tax within one month after the shares are listed. Founder shareholders that do not pay the tax by the due date are subject to income tax on the gains at the ordinary income tax rates.

Other capital gains derived by residents are included in taxable income and are subject to tax at the normal progressive income tax rates. Other capital gains derived by nonresidents are subject to tax at a rate of 20%. The law provides that the 20% tax is imposed on an amount of deemed income. The Minister of Finance established the deemed income for sales of unlisted shares. The deemed income is equal to 25% of the gross sale proceeds, resulting in an effective tax rate of 5% of the gross sale proceeds. This rule applies to residents of nontreaty countries and to residents of treaty countries if the applicable treaty allows Indonesia to tax the income.

Transferors of the right to use land or buildings must make advance payments of tax equal to 5% of the value transferred. The transferee must pay a transfer duty of 5%, which may be reduced to 2.5% for transfers in business mergers approved by the Director General of Taxation.

**Administration.** Effective from the 2008 fiscal year, the annual corporate tax return must be filed by the end of the fourth month following the end of the fiscal year. The balance of annual tax due must be settled before filing the annual tax return. The prior rules apply to the annual corporate tax return for the 2007 fiscal year. Accordingly, the corporate tax return for the 2007 fiscal year must be filed within three months after the end of the fiscal year.

Tax must be paid in advance by monthly installments, which are due on the 15th day of the month following the month for which tax is payable.

**Dividends.** In general, dividends are included in taxable income.

Dividends paid to Indonesian resident taxpayers are subject to withholding tax at the rate of 15%. This tax is an advance payment of the dividend recipient's Indonesian tax liability. Dividends received by resident limited liability companies and certain other entities are exempt from tax if they meet the following conditions: the dividends are paid out of retained earnings; the company receiving the dividends holds at least 25% of the shares of the payer of the dividends; and the company receiving the dividends derives active business income in addition to such dividends. Dividends remitted overseas are subject to a final 20% withholding tax, unless an applicable tax treaty provides a lower rate.

**Foreign Tax Relief.** A credit is allowed for tax paid or due overseas on income accruing to an Indonesian company, provided it does not exceed the allowable foreign tax credit. The allowable foreign tax credit is computed based on a per country limitation.

### C. Determination of Trading Income

**General.** Income is broadly defined. It includes, but is not limited to, business profits, gains from sales of transfers of assets, interest, dividends, royalties and rental and other income with respect to the use of property.

Certain income is not taxable. Interest earned by resident companies on time deposits, certificates of deposit and savings accounts is subject to a 20% withholding tax, representing a final tax on such income. A final 20% (or lower rate provided in a tax treaty) withholding tax is imposed on interest earned by nonresidents.

Taxpayers are generally able to deduct from gross income all expenses to the extent that they are incurred in earning taxable income. Nondeductible expenses include the following: income tax; other expenses incurred for the private needs of shareholders, associates or members; gifts, donations and support (support includes a subsidy, aid, gift or award given to an employee or related parties); and the formation of or additions to reserves and provisions. Foreign business losses are not deductible.

Foreign-exchange gains and losses are treated as taxable income and deductible expenses.

**Inventories.** For tax purposes, inventories must be valued at cost using either the first-in, first-out (FIFO) or average cost method. The last-in, first-out (LIFO) method is not allowed.

**Provisions.** Provisions are generally not deductible for tax purposes. Bad debts may be deducted if they have been deducted as corporate losses in commercial financial reports and if a list of the names of the debtors and totals of the bad debts has been delivered to a public court or to the state receivership and auctions agency, and to the Director General of Taxation, and the list must be published. Specific rules apply for the creation of provisions and reserves by banks, insurance companies and certain nonbank financial institutions, such as leasing companies that lease assets under finance leases.

**Depreciation and Amortization Allowances.** Depreciation is calculated on the useful life of an asset by applying the straight-line method or double-declining-balance method. In general, depreciation is deducted beginning with the month the expenditure is incurred. However, for assets under construction, depreciation begins with the month in which the construction of the assets is completed. Buildings are depreciated using the straight-line method. The following table sets forth the useful lives and depreciation rates for depreciable assets.

Class of Asset	Useful Life (Years)	Depreciation Method	
		Straight-Line (%)	Double-Declining-Balance (%)
Buildings			
Permanent	20	5	—
Nonpermanent	10	10	—
Other assets			
Class 1	4	25	50
Class 2	8	12.5	25
Class 3	16	6.25	12.5
Class 4	20	5	10

Intangible assets with more than one year of benefit, including leases of tangible property, are amortized according to their useful lives using the same percentages applicable to fixed assets. Special depreciation and amortization rules apply to assets used in certain businesses or in certain areas.

**Relief for Losses.** Tax losses may not be carried back. They may generally be carried forward for five years. Tax losses incurred by certain businesses or incurred in certain areas may be carried forward for up to 8 or 10 years.

**Groups of Companies.** The losses of one company may not be used to reduce the profits of an affiliate.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on delivery of taxable goods, on imports of goods and on services (including services furnished by foreign taxpayers outside Indonesia if the services have a benefit in Indonesia), unless specifically exempt; standard rate	10

Nature of Tax	Rate (%)
Sales tax on luxury goods, imposed in addition to the VAT on the delivery of luxury goods manufactured in or imported into Indonesia; rate depends on the nature of the goods	10 to 75
Transfer duty on land and buildings	5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** There are no exchange controls affecting the repayment of loans and the remittance of dividends, interest and royalties. Foreign loans should be reported to the Central Bank of Indonesia to ensure enforceability and repatriation in case of any future exchange controls.

**Debt-to-Equity Rules.** Under the tax law, the Minister of Finance may determine an acceptable debt-to-equity ratio. Related-party loans may be treated as equity investments, with the interest expense disallowed for tax purposes. The minister has not yet announced an acceptable debt-to-equity ratio. If there is a special relationship between two taxpayers that might provide tax advantages, the Director General of Taxation has the authority to determine income and deductions and to reclassify loans as equity.

**Transfer Pricing.** The Indonesian Tax Authority uses advance pricing agreements (APAs) to regulate transactions between related parties. Broadly, an APA represents an advance agreement between a company and the Director General of Taxation regarding the determination of the acceptable pricing for a transaction between related parties. An APA provides the sales price for manufactured goods, the amount of royalties and other information. An APA may be entered into with the Director General of Taxation (unilateral) or between the Director General of Taxation and the foreign tax authority (bilateral).

## F. Treaty Withholding Tax Rates

	Dividends (%)		Interest (b)	Royalties
	A	B	%	%
Algeria	15	15	0/15	15
Australia	15	15	0/10	10/15 (c)
Austria	15	10	0/10	10
Bangladesh	15	10	10	10
Belgium	15	10	0/10	10
Brunei	15	15	15	15
Bulgaria	15	15	0/10	10
Canada	15	10	0/10	10
China	10	10	0/10	10
Czech Republic	15	10	0/12.5	12.5
Denmark	20	10	0/10	15
Egypt	15	15	0/15	15
Finland	15	10	0/10	10/15 (c)
France	15	10	0/10/15	10/15 (c)
Germany	15	10	0/10	10/15 (a)(c)
Hungary	15	15	0/15	15
India	15	10	0/10	15
Italy	15	10	0/10	10/15 (c)
Japan	15	10	0/10	10
Jordan	10	10	0/10	10
Kuwait	10	10	0/5	20

	Dividends (%)		Interest (b)	Royalties
	A	B	%	%
Luxembourg	15	10	0/10	12.5 (a)
Malaysia (d)	15	15	0/15	15
Mexico	10	10	0/10	10
Mongolia	10	10	0/10	10
Netherlands	10	10	0/10	10
New Zealand	15	15	0/10	15
North Korea	10	10	0/10	10
Norway	15	15	0/10	10/15 (c)
Pakistan	15	10	0/15	15 (a)
Philippines	20	15	0/10/15	15
Poland	15	10	0/10	15
Romania	15	12.5	12.5	12.5/15 (c)
Russian Federation	15	15	0/15	15
Seychelles	10	10	0/10	10
Singapore	15	10	0/10	15
Slovak Republic	10	10	0/10	15
South Africa	15	10	0/10	10
South Korea	15	10	0/10	15
Spain	15	10	0/10	10
Sri Lanka	15	15	0/15	15
Sudan	10	10	0/15	10
Sweden	15	10	0/10	10/15 (c)
Switzerland	15	10	10	12.5 (a)
Syria	10	10	10	15/20 (c)
Taiwan	10	10	0/10	10
Thailand	15	15	0/15	10/15 (c)
Tunisia	12	12	0/12	15
Turkey	10	10	0/10	10
Ukraine	15	10	0/10	10
United Arab Emirates	10	10	0/5	5
United Kingdom	15	10	0/10	10/15 (c)
United States	15	10	0/10	10
Uzbekistan	10	10	0/10	10
Venezuela	15	10	0/10	20 (a)
Vietnam	15	15	0/15	15
Nontreaty countries	20	20	20	20

A Rate applicable to portfolio investments.

B Rate applicable to substantial holdings.

(a) Technical services are subject to the following reduced rates of withholding tax: Germany, 7.5%; Luxembourg, 10%; Pakistan, 15%; Switzerland, 5%; and Venezuela, 10%.

(b) If there are two rates other than 0%, the higher rate applies to interest paid to companies in certain specified industries or to interest on certain bonds. The 0% rate applies to interest on government bonds.

(c) The rates vary according to the rights or information licensed.

(d) A protocol amending the 1991 tax treaty between Indonesia and Malaysia was signed in 2006. Under the protocol, a withholding tax rate of 10% will apply to dividends, interest and royalties. At the time of writing, the exchange of instruments of ratification of the protocol had not yet occurred.

In addition to the above treaties, Indonesia has entered into agreements for the reciprocal exemption of taxes and duties on air transport with Bangladesh, Croatia, Laos, Morocco, Saudi Arabia and South Africa.

# IRAQ

(Country Code 964)

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**A. At a Glance**

Corporate Income Tax Rate (%)	15
Capital Gains Tax Rate (%)	15
Branch Tax Rate (%)	15
Withholding Tax (%)	
Dividends	0
Interest	15 (a)
Royalties	15 (a)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (b)

(a) This withholding tax is imposed on payments to nonresidents.

(b) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** In general, income tax is imposed on corporate entities and foreign branches with respect to taxable profit from all sources arising or deemed to arise in Iraq. Income is deemed to arise in Iraq if either of the following is located there:

- The place of performance of work; or
- The place of delivery of work.

**Tax Rate.** The corporate income tax rate is 15%.

**Capital Gains.** Capital gains derived from the sale of fixed assets are taxable at the normal corporate income tax rate. Capital gains derived from the sale of shares and bonds not in the course of a trading activity are exempt from tax. Capital gains derived from the sale of shares and bonds in the course of a trading activity are taxable at the normal corporate income tax rate.



**Administration.** Tax returns for all corporate entities must be filed in Arabic within five months after the end of the fiscal year, together with payment of the total amount of taxes due according to the final tax declaration. If the tax return is not submitted within the statutory time limit (21 days from the due date specified by the tax authorities), delay fines of 5% are imposed for the first 21-day period. Penalties are doubled after the 21-day period. The total amount of the penalty may not exceed IQD 500,000. The Minister of Finance may waive or reduce these fines.

In addition to the penalties above, foreign branches are subject to an additional penalty of IQD 10,000 if they do not submit financial statements by the due date for the tax return.

A taxpayer may be subject to imprisonment for a period ranging from three months to two years if convicted of fraud to evade the payment of income tax.

**Dividends.** In general, dividends received are exempt from tax.

**Interest.** Interest is subject to income tax at the normal rate.

**Foreign Tax Relief.** A foreign tax credit is available to Iraqi companies on income taxes paid abroad. In general the foreign tax credit is limited to the amount of an Iraqi company's income tax on the foreign income calculated on a country-by-country basis. Any excess foreign tax credits may be carried forward for five years.

### C. Determination of Trading Income

**General.** All income earned in Iraq from trading or other sources is taxable in Iraq, except for income exempted by the income tax law, the industrial investment law or the investment law in the Kurdistan region.

All business expenses incurred to generate income are allowable, with limitations on certain items, such as entertainment and donations. However, provisions and reserves are not deductible for tax purposes.

**Tax Depreciation.** The Iraqi Depreciation Committee sets the maximum depreciation rates for various types of fixed assets. If the rates used for accounting purposes are greater than the prescribed rates, the excess is disallowed. The tax law allows accelerated depreciation rates. A tax regulation provides straight-line depreciation rates for the financial sector (banks and insurance companies) and other sectors. The following are the depreciation rates set by the Iraqi Depreciation Committee.

Asset	Financial Sector (%)	Other Sectors (%)
Buildings	2 to 5	2 to 5
Office equipment	20	15 to 25
Motor vehicles	20	15
Plant and machinery	20	15

Used assets are depreciated at statutory rates established by the tax authorities, calculated on the purchase price.

**Relief for Losses.** Taxpayers may carry forward unabsorbed losses for five years to offset profits in such years. However, the

amount of losses carried forward that may be deducted each year is limited to 50% of taxable income. Losses may not be carried back. Losses incurred outside Iraq cannot be offset against taxable profit in Iraq.

**Groups of Companies.** Iraqi law does not contain any provisions for filing consolidated returns or for relieving losses within a group of companies.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Stamp fees; imposed on the total contract value	0.02
Real estate rent tax; imposed on the annual rent from real estate	10
Social security contributions; imposed on salaries and benefits of local and expatriate employees; a portion of employee allowances up to an amount equaling 30% of the base salary is not subject to social security contributions	
Employer	12
Employee	5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The currency in Iraq is the Iraqi dinar (IQD). Iraq does not impose any foreign-exchange controls.

**Debt-to-Equity Rules.** The only restrictions on debt-to-equity ratios are those stated in the articles and memoranda of corporations.

#### F. Tax Treaties

Iraq has entered into double tax treaties with Egypt, Jordan, Libya, Somalia, Sudan, Syria, Tunisia and Yemen.

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(Country Code 353)

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**A. At a Glance**

Corporate Income Tax Rate (%)	12.5 (a)
Capital Gains Tax Rate (%)	20 (b)
Branch Tax Rate (%)	12.5 (a)
Withholding Tax (%)	
Dividends	20 (c)(d)
Interest	20 (d)(e)(f)
Royalties	20 (d)(f)(g)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1
Carryforward	Unlimited

- (a) This rate applies to trading income. A 25% rate applies to certain income and to certain activities. Profits from the sale of goods manufactured in Ireland and from certain other activities are taxed at an effective rate of 10%. For details concerning these rates, see Section B.
- (b) A 40% rate applies to disposals of certain life insurance policies.
- (c) This withholding tax is imposed on dividends distributed subject to exceptions (see Section B).
- (d) Applicable to both residents and nonresidents.
- (e) Interest paid by a company in the course of a trade or business to a company resident in another EU member state or in a country with which Ireland has entered into a double tax treaty is exempt from withholding tax. Exemptions also apply to bank interest paid to nonresidents and, subject to certain conditions, interest derived from bank accounts and paid to Irish resident companies and pension funds.
- (f) Ireland has implemented the EU Interest and Royalties Directive, effective from 1 January 2004.
- (g) Under Irish domestic law, withholding tax on royalties applies only to patent royalties and to other payments regarded as "annual payments" under Irish law.

**B. Taxes on Corporate Income and Gains**

**Corporation Tax.** A company resident in Ireland is subject to corporation tax on its worldwide profits (income plus capital gains). A company resides where its real business is carried on, that is, where the central management and control of the company is exercised. In addition, a company incorporated in Ireland is treated as resident for tax purposes in Ireland unless either of the following applies:

- The company or a related company (50% common ownership of ordinary share capital) carries on a trade in Ireland and either of the following conditions is satisfied: the company is controlled by persons (companies or individuals) resident in a European Union (EU) member country or in a country with which Ireland has entered into a tax treaty (treaty country), provided these persons are not controlled by persons that are not resident in such countries; or the principal class of shares in the company or a related company is substantially and regularly traded on one or more recognized stock exchanges in an EU or treaty country.

- The company is regarded under a tax treaty as being resident in a treaty country and not resident in Ireland.

A company not resident in Ireland is also subject to corporation tax if it carries on a trade in Ireland through a branch or agency. The liability applies to trading profits of the branch or agency, other income from property or rights used by the branch or agency, and chargeable gains on the disposal of Irish assets used or held for the purposes of the branch or agency.

A company resident in a country with which Ireland has entered into a tax treaty is subject to tax only on profits generated by a permanent establishment as described in the relevant treaty. This normally requires a fixed place of business or dependent agent in Ireland. Companies that are resident in nontreaty countries and do not trade in Ireland through a branch or agency are subject to income tax on income arising in Ireland and to capital gains tax (CGT) on the disposal of certain specified Irish assets (see *Chargeable Capital Gains* below).

**Rates of Corporation Tax.** The standard rate of corporation tax on trading income is 12.5%.

A 25% rate applies to the following: certain nontrading income, such as Irish rental and investment income; foreign income unless the income is part of an Irish trade; and income from “working minerals” (broadly defined), petroleum activities and dealing or developing land other than construction operations (for the taxation of construction operations, see *Land Transactions* below). The effective rate of 10% for certain activities (see next paragraph) continues to apply.

Under a proposal in the 2008 Finance Bill, the 12.5% rate of corporation tax would apply to certain foreign dividends received on or after 31 January 2008.

A reduction in the tax rate is available on income from the sale of goods manufactured in Ireland and from some service activities, giving an effective rate of 10%. This relief continues until 31 December 2010. The 10% rate also applied until 31 December 2005 to approved service operations in the Shannon Airport Development Zone and to approved international financial activities carried on in the International Financial Services Centre (IFSC) in Dublin. Activities carried on in the IFSC include international banking, insurance, fund management, brokerage and dealer operations, treasury management, financial advice and back office operations.

On 22 July 1998, Ireland reached an agreement with the EU Commission on the phasing in of a 12.5% rate of corporation tax for trading activities. Effective from 1 January 2003, the 12.5% rate replaced the 10% rate available to companies that carry on certain manufacturing activities and to companies based in the Shannon Airport Development Zone or Dublin’s IFSC.

The following are other principal aspects of the agreement with the EU Commission that continue to be relevant:

- Existing (as at 22 July 1998) operations that were eligible for the 10% rate will continue to benefit from this rate until 31 December 2010 in the case of manufacturing activities and certain internationally traded services;

- Projects established on or after 23 July 1998 that were eligible for the 10% rate until 31 December 2002 are subject to a 12.5% rate, effective from 1 January 2003; and
- Certain specified projects on a “pipeline” list agreed to by the EU Commission that were approved by the Industrial Development Agency (IDA) Ireland (the IDA approves grants to certain foreign-owned companies engaging in manufacturing activities in Ireland) before 31 July 1998 may benefit from the 10% rate until December 2010.

*Land Transactions.* Several different tax rates apply to land transactions. Profits or gains derived from disposals of residential land are taxed at a rate of 20%. This rate is derived by reducing by  $\frac{1}{5}$  the normal rate on profits derived from residential land, which is 25% (see above). Most construction operations are subject to corporation tax at the standard rate.

*Shipping Companies.* Shipping companies that undertake qualifying shipping activities, including carriage of cargo and passengers, marine-related activities, leasing of qualifying ships and related activities, may elect to be subject to a special tonnage tax regime instead of the normal corporation tax regime.

Under the tonnage tax regime, profits are calculated on the basis of a specified profit per day according to the tonnage of the relevant ship. The following are the amounts of the daily profit attributed to each qualifying ship:

- For each 100 tons up to 1,000 tons: €1.00;
- For each 100 tons between 1,000 and 10,000 tons: €0.75;
- For each 100 tons between 10,000 and 25,000 tons: €0.50; and
- For each 100 tons above 25,000 tons: €0.25.

The profits attributed to each qualifying ship for the accounting period will be determined by multiplying the daily profit as determined above by the number of days in the accounting period, or, if the ship was operated by the company as a qualifying ship for only part of the period, by the number of days in that part of the accounting period.

The standard corporation tax rate for trading income (12.5%) applies to the amount of profits determined under the rules described above.

*Oil and Gas Exploration.* It has been announced by the Irish government that a new profit resources rent tax (PRRT) will apply, effective for oil and gas exploration licenses awarded after 1 January 2007. The PRRT will be imposed in addition to the 25% corporate tax rate, and it will operate on a graduated basis that is linked to the profitability of the oil or gas field. The tax rate will vary according to the profit ratio (rate of profits less 25% corporation tax divided by accumulated capital investment). The following are the tax rates.

<b>Profit Ratio</b>	<b>Tax Rate (%)</b>
Less than 1.5	0
Between 1.5 and 3	5
Between 3 and 4.5	10
Exceeding 4.5	15

The enabling legislation for the PRRT will be contained in the 2008 Finance Act.

*Life Insurance Companies.* For life insurance business written before 1 January 2001, policyholders are subject to income tax at the standard rate (now 20%) on the investment income and gains less management expenses attributable to the policyholders. Life insurance companies withhold the income tax. Resident individuals do not pay any further tax. Companies are subject to Irish CGT arising on the disposal of a life insurance policy and receive a credit for income tax at the standard rate deemed to have been deducted by the life insurance company. For life insurance business written after 1 January 2001 and all other business of life companies, a tax-free build up of investment return over the term of the policy (gross roll-up) is allowed. However, for Irish residents, an exit tax is imposed on gains resulting from certain “chargeable events” (as defined). The exit tax is withheld at the standard rate of income tax plus 3% on the difference between proceeds on redemption, maturity or assignment, and the premiums or subscription amounts paid. The 2002 Finance Act introduced a 20% surcharge on personal portfolio life insurance policies (PPLPs) in addition to the normal exit tax. The surcharge applies to domestic and foreign PPLPs that were not cashed in before 26 September 2001.

Deemed disposal rules apply to gross roll up life policies held by Irish residents. A deemed chargeable event occurs at the end of every eight-year period (relevant period) beginning with the inception of the life policy. Exit tax is imposed on the gain arising on this deemed chargeable event. The first deemed disposals will arise on 1 January 2009. The new rules do not apply to policies held by nonresidents.

Shareholder profits of domestic life insurance companies are taxed at the standard rate of corporation tax (now 12.5%) regardless of whether they relate to business written before or after 1 January 2001. Shareholder profits of IFSC companies with a license that did not expire until 31 December 2005 were taxed at an effective rate of 10% until that date. Effective from 1 January 2001, existing IFSC companies may seek business from Irish residents.

Companies investing in Irish policies are generally subject to an exit tax, as described above. However, corporate holders of certain foreign policies are subject to self-assessment tax at a rate of 25% on profits from the investment in the policies. These foreign policies are policies issued by an insurance company or a branch of such a company carrying on business in a member state of the EU (other than Ireland), in a state in the European Economic Area (EEA) or in a country in the Organization for Economic Cooperation and Development (OECD) with which Ireland has entered into a tax treaty. Payments with respect to such policies accruing to Irish residents that are not companies are subject to tax at the standard rate of income tax (now 20%) plus 3%. The above rates depend on the filing of a self-assessment return with the Irish authorities. The deemed disposal measures (see above) also apply to foreign life policies. Payments with respect to foreign policies, other than those mentioned above, are subject to tax at a rate of 40%. If a company investing in a life insurance policy is a close company, additional surcharges may apply.



*Investment Undertakings (Gross Roll-Up Funds and Net Funds).* For investment undertakings (gross roll-up funds), distributions made annually or at more frequent intervals are subject to an exit tax at the standard rate of income tax (currently 20%). Other payments made are subject to an exit tax at the standard rate of income tax plus an additional levy of 3%. This exit tax applies to the cancellation, redemption or assignment of shares and is imposed on the difference between the amount payable to the shareholder and the amount invested by the shareholder. A pro rata calculation applies for partial disposal, redemption, cancellation, repurchase or assignment of shares unless the company has elected to apply a first-in, first-out basis of identification for such disposals. Investments in IFSC funds are now covered by the investment undertakings rules described above. Nonresidents are exempt from the exit tax in investment undertakings described above if they provide the relevant declarations. Certain Irish residents are also exempt from the exit tax if the relevant declarations are provided.

The 2007 Finance Act introduced a 20% surcharge on personal portfolio investment undertakings (PPIUs) in addition to the normal exit tax. The surcharge also applies to foreign PPIUs that are equivalent to Irish investment undertakings.

Unit holders are deemed to dispose of units acquired by them every eight years from the date of acquisition. To the extent that a gain arises on this deemed disposal, exit tax must be deducted and paid by the investment undertaking to the Irish tax authorities. On the disposal of the relevant unit, a credit is available for the tax paid on the deemed disposal. Similarly, a refund is payable to the unit holder if the actual exit tax liability is less than the exit tax paid on the deemed disposals. This refund must be paid by the investment undertaking which can set off the refund against future exit tax. The new rules apply to units acquired on or after 1 January 2001.

Offshore funds that are equivalent to Irish investment undertakings are also subject to tax on a self-assessment basis similar to the rules applicable to foreign life policies (see *Life Insurance Companies* above). Deemed disposal rules also apply to Irish residents after every eight years.

Offshore funds domiciled in another EU member state, European Economic Area (EEA) state or a member state of the Organization for Economic Cooperation and Development (OECD) with which Ireland has entered into a double tax agreement, are no longer subject to the offshore fund rules, effective from 2 April 2007. They are subject to either marginal rate of income tax on distributions or CGT at 20%. Certain transitional rules apply. Other offshore funds are still subject to either marginal rate income tax or CGT at 40%, depending on certain circumstances.

Investments in undertakings for collective investment (net funds) are subject to tax at the standard rate of income tax at the level of the fund on an annual basis with no further tax imposed on the individual unit holder with respect to dividends. Companies are subject to Irish CGT arising on investments in such funds and receive a credit against corporation tax liability for income tax at the standard rate deemed to have been deducted by the fund.

Ireland has formally agreed to the exchange-of-information regime under the EU Savings Directive and has enacted domestic legislation to implement this directive.

**Chargeable Capital Gains.** Chargeable capital gains, other than the gains described in the next paragraph, are subject to corporation tax at a rate of 20%. In computing a gain, relief is given for the effects of inflation by applying an index factor. Effective from 1 January 2003, indexation relief applies only for the period of ownership of an asset up to 31 December 2002. Indexation relief does not apply to capital gains derived by life business funds. A deemed disposal system applies to the assets of such funds.

A 40% rate applies to gains on nonqualifying foreign life insurance policies arising on the death of the insured.

In calculating the liability for CGT on the disposal of development land or unquoted shares deriving their value from such land, certain restrictions apply. The adjustment for inflation is applied only to that portion of the purchase price reflecting the current use value of the land at the date of purchase (see first paragraph of this section for changes to indexation relief). The balance of the purchase price, without an adjustment for inflation, is still allowed as a deduction. Gains on development land may be reduced only by losses on development land. However, losses on development land may be set off against gains on disposals of other assets.

A nonresident company is subject to CGT on its chargeable capital gains from the following assets located in Ireland:

- Land and buildings;
- Minerals and mineral rights;
- Exploration or exploitation rights in the continental shelf;
- Unquoted shares deriving the majority of their value from such assets; and
- Assets used in a business carried on in Ireland through a branch or agency.

*Exit Charge.* A company that ceases to be tax resident in Ireland is deemed to have disposed of all of its assets at that time and to have immediately reacquired the assets at market value. The company is subject to CGT on any gains resulting from such deemed disposal. The tax is calculated in accordance with the normal rules under the Capital Gains Tax Act.

The exit charge does not apply if 90% of the exiting company's share capital is held by foreign companies resident in a jurisdiction with which Ireland has concluded a double tax treaty, or persons who are directly or indirectly controlled by such foreign companies.

An exemption applies to a company that ceases to be tax resident in Ireland but continues to carry on a trade in Ireland through a branch or an agency. In such circumstances, the assets used for the purposes of the branch or agency are not subject to the exit charge.

A company may postpone the charge in certain circumstances. In addition, an unpaid exit charge may be recovered from other group companies or controlling directors.

*Substantial Shareholding Relief.* Effective from 2 February 2004, an exemption from CGT applies to the disposal by an Irish company of a shareholding in another company (the investee company) if the following conditions are satisfied:

- At the time of disposal, the investee company is resident for tax purposes in Ireland, in another EU member state or in a country with which Ireland has entered into a tax treaty;
- The Irish company has held (directly or indirectly), for a period of at least 12 months ending in the previous 24 months, a minimum holding of 5% of the shares in the investee company; and
- The investee company is wholly or principally a trading company or, taken together, the holding company, its 5%, group and the investee company are wholly or principally a trading group.

If the above conditions are satisfied, the relief applies automatically (no claim or election mechanism exists).

**Administration.** The corporation tax liability is determined by self-assessment. As a result, a company must estimate its own liability. For accounting periods ending on or after 1 January 2006, preliminary tax is payable in a single installment 31 days before the end of the accounting period. If the due date for payment falls after the 21st day of the month, the 21st day becomes the due date. The preliminary tax equals 90% of the tax liability for the year.

“Small companies” may either follow the above rules or pay preliminary tax equal to 100% of their tax liability for the preceding year. A company qualifies as a “small company” if its corporation tax liability for the preceding year did not exceed €200,000 (€50,000 and €150,000 for preliminary tax payment dates before 7 December 2006 and 6 December 2007, respectively).

For accounting periods ending on or after 1 January 2006, if 90% of the final tax liability is not paid by the due date in the month before the end of the accounting period and if this underpayment was caused solely by a chargeable gain arising after the due date, a topping-up payment may be made within one month after the end of the accounting period. No interest is charged if the topping-up payment brings the aggregate of payments up to at least 90% of the final tax liability for the period.

Effective for accounting periods ending on or after 1 February 2007, a company that pays more than 90% of its corporation tax liability for a period as preliminary tax can elect jointly with another group company that has not met the 90% test to treat the excess as having been paid by that latter company for interest calculation purposes only. Certain conditions apply.

Any balance of corporation tax due is payable by the due date for the filing of the corporation tax return (Form CT1). This is normally nine months after a company’s accounting year-end.

When the nine-month period ends on or after the 21st day of a month, the 21st of that month becomes the due date for filing the Form CT1 and the payment of any balance of corporation tax.

If a company does not comply with the above filing obligation, it is subject to one of the following surcharges: 5% of the tax, up to a maximum penalty of €12,695, if the filing is not more than two months late; or 10% of the tax, up to a maximum penalty of

€63,485, in all other cases. In addition, the company suffers the reduction of certain tax reliefs, which consist of the set off of certain losses against current-year profits and the surrender of losses among a group of companies. The following are the applicable reductions: a 25% reduction, up to a maximum of €31,740, if the filing is not more than two months late; or a 50% reduction, up to a maximum of €158,715, in all other cases.

A limited number of cases are selected for later in-depth revenue examination, and the assessment can be increased if the return is inaccurate.

A company must file a CGT return reporting disposals of development land and related unquoted shares and pay CGT on such disposals. CGT may be due twice a year, depending on the date of realization of the chargeable gains. For chargeable gains arising during the period of 1 January to 30 September, CGT must be paid by 31 October that same year. CGT on gains arising in the period of 1 October to 31 December are due on or before 31 January of the following year.

### **Dividends**

*Dividend Withholding Tax.* Dividend withholding tax (DWT) is imposed on distributions made by Irish companies at a rate of 20%.

The law provides for many exemptions from DWT. Dividends paid to the following recipients are not subject to DWT:

- Companies resident in Ireland;
- Approved pension schemes;
- Qualifying employee share ownership trusts;
- Collective-investment undertakings;
- Charities;
- Certain sports bodies promoting athletic or amateur games; and
- Trustees of Approved Minimum Retirement Funds (funds held by qualifying fund managers on behalf of the individuals entitled to the assets).

Additional exemptions are provided for nonresidents. Distributions are exempt from DWT if they are made to the following:

- Nonresident companies, which are under the direct or indirect control of persons (companies or individuals) who are resident in an EU member country or in a country with which Ireland has entered into a tax treaty (treaty country), provided that these persons are not under the control of persons not resident in such countries;
- Nonresident companies, or 75% parent companies of nonresident companies, the principal class of shares of which is substantially and regularly traded on a recognized stock exchange;
- Companies not controlled by Irish residents that are resident in an EU member country or a treaty country;
- Noncorporate persons who are resident in an EU member country or a treaty country and are neither resident nor ordinarily resident in Ireland; and
- Certain qualifying intermediaries and authorized withholding agents.

Detailed certification procedures apply to most of the exemptions from DWT described above.

DWT does not apply to dividends covered by the EU Parent-Subsidiary directive. Antiavoidance provisions prevent the use of EU holding companies to avoid DWT. If a majority of an EU parent company's voting rights are controlled directly or indirectly by persons not resident in an EU or tax treaty country, DWT applies unless it can be established that the parent company exists for bona fide commercial reasons and does not form part of a tax avoidance scheme. DWT may also be recovered under a double tax treaty.

Distributions paid out of certain types of exempt income, such as exempt stallion fees, woodland income or patent income, are not subject to DWT.

Companies must file a return within 14 days after the end of the calendar month of the distribution. The return is required regardless of whether DWT applies to the distributions. Any DWT due must be paid over to the Collector General when the return is filed.

*Other:* A company resident in Ireland can exclude from its taxable income distributions received from Irish resident companies (franked investment income).

Irish resident shareholders, other than companies, are subject to income tax on distributions received. DWT may be claimed as a credit against the recipient's income tax liability. Recipients not subject to income tax may obtain a refund of DWT.

**Foreign Tax Relief.** Under tax treaty provisions, direct foreign tax on income and gains of an Irish resident company may be credited against the Irish tax levied on the same profits. However, foreign tax relief cannot exceed the Irish corporation tax attributable to the same profits.

For purposes of calculating the credit under tax treaties, income derived from each source is generally treated as a separate stream. Consequently, foreign tax may generally be credited only against the Irish corporation tax on the income that suffered the foreign tax. However, the 2006 Finance Act introduced measures allowing a unilateral credit for otherwise unrelieved foreign tax on interest income. This credit may be offset against the corporation tax payable on the "relevant interest." "Relevant interest" is defined as interest income from group companies, which are greater than 25% related and are resident in treaty countries. The unilateral credit relief effectively introduces a pooling mechanism for the calculation of the relief available. This relief replaces the enhanced credit relief provision, which was applicable only to interest received by certain nonbanking financial enterprises qualifying for the reduced 10% corporation tax rate.

The 2007 Finance Act introduced a new tax credit treatment for foreign branches of Irish companies, which is effective for accounting periods ending on or after 1 January 2007. If an Irish company has branches in more than one country, it can now pool its excess foreign tax credits between the different branches. This is beneficial if one branch pays the foreign equivalent of corporation tax at a tax rate higher than 12.5% and another branch pays tax at a rate lower than 12.5%.

If no treaty exists, a deduction for foreign tax paid is allowed against such income and gains. However, companies that derive income from the following activities are also entitled to a  $\frac{9}{10}$  unilateral foreign tax credit against the corporation tax payable with respect to such income:

- Sales of computer software; and
- Computer services (which are defined as data processing services, software development services, and technical or consultancy services relating to either of the first two types of services).

The 2007 Finance Act introduced an Irish tax credit for taxes equivalent to corporation tax and CGT paid by a branch if Ireland has not entered into a tax treaty with the country where the branch is located or if Ireland's tax treaty with such country does not provide for relief (that is, unilateral relief for branch profits tax).

Unilateral credit relief for foreign tax paid by a company on interest income that is included in the trading income of a company for Irish corporation tax purposes may also be available. The relief is available only if the company cannot claim relief under a double tax treaty for the foreign tax and if the tax has not been repaid to the company. The unilateral relief is equal to the lesser of the Irish corporation tax attributable to the relevant interest or the foreign tax attributable to the relevant interest.

An amended EU Parent-Subsidiary Directive (2003/123/EEC) entered into force on 2 February 2004. The amended directive extended the list of entities that can take advantage of the directive's provisions (for example, Irish unlimited liability companies) and relaxed some of the conditions to be met. The key amendment incorporated into Irish law in the 2004 Finance Act is a reduction in the shareholding requirement from 25% to 5% (this goes further than the directive required). The 2004 Finance Act also extended the benefit of the directive to Irish branches of EU companies that receive dividends from their EU subsidiaries. It also allows a parent company to obtain credit for underlying taxes paid overseas by lower-tier subsidiaries (subject to a 5% voting-right test at each level). These amendments, which overlap to a significant extent with the unilateral credit relief measures (described below), are effective from 1 January 2004. The 2005 Finance Act extended the benefits of the EU Parent-Subsidiary Directive to Switzerland.

Unilateral credit relief may be available for Irish resident companies, or Irish branches of companies resident in EEA states (excluding Liechtenstein) with which Ireland has entered into a tax treaty, receiving dividends from foreign subsidiaries. Under the measures, such a company receiving a dividend from a 5% (25%, before 2 February 2004) subsidiary that is resident in a country with which Ireland does not have a double tax treaty is entitled to reduce the Irish tax on the dividend by any direct or withholding tax imposed on the dividend and by an appropriate portion of the foreign tax imposed on the income underlying the dividend. For this purpose, a 5% subsidiary relationship exists if the parent company owns directly or indirectly 5% of the voting rights. Unilateral credit relief may be claimed even if a double tax treaty applies. This is useful if the relief provided under a tax treaty is not as beneficial as unilateral tax relief.

A parent company receiving a dividend from its 5% subsidiary (whether resident in a tax treaty country or not) that itself has subsidiaries is entitled to reduce the Irish tax by an appropriate amount of tax (direct or withholding) and by the underlying tax borne by that subsidiary and its subsidiaries, and so on down through the chain of companies. This relief is subject to the following conditions: the payer of the dividend must be a 5% subsidiary of the recipient of the dividend; and the distributing company must be connected with the ultimate parent company. A company is connected if 5% (10% before 2 February 2004) of its voting rights is held directly or indirectly by the ultimate parent company.

The 2004 Finance Act allows, effective from 2 February 2004, companies to “mix” the credits for foreign tax on different dividend streams from 5% subsidiaries for the purpose of calculating the overall tax credit in Ireland (this is called “onshore pooling”). Any unused excess credit balance can be carried forward indefinitely and offset in subsequent periods. The dividend paying company can be resident in any country.

The effect of these changes allows for much greater scope in the tax-efficient structuring of dividend repatriations. The new measures apply to shareholdings of companies resident anywhere, unlike the 2004 Finance Act’s new rules for CGT relief (see *Chargeable Capital Gains* above), which apply only to treaty partners and EU member states.

A company who incurred CGT tax liability in one of 10 specified countries may claim credit for foreign tax against Irish CGT on the same gain. This rule applies for accounting periods ending on or after 1 January 2007.

### **C. Determination of Trading Income**

**General.** The calculation of trading income is based on the company’s accounts prepared in accordance with generally accepted accounting principles, subject to certain adjustments and provisions. The adoption of International Financial Accounting Standards (IFRS) or Irish generally accepted accounting practice (GAAP) embodying IFRS may result in major changes to the tax treatment of certain items. The 2005 Finance Act introduced detailed rules to address the transition and the 2006 Finance Act contained several technical amendments.

Patent royalties from patents created in Ireland are exempt from tax if certain conditions are satisfied, subject to a cap, effective from 1 January 2008. If derived from Irish sources, income derived from commercial woodlands, stallion fees and greyhound service fees is also exempt from tax. These exemptions apply only to Irish resident companies.

Expenses must be incurred wholly and exclusively for the purposes of the trade and be of a revenue (as distinct from capital) nature. However, entertainment expenses are totally disallowed, unless they are incurred for employees only. The deductibility of motor leasing expenses is restricted.

Revenue expenditure incurred in the three years before the beginning of trading is generally deductible.

Depreciation of assets is not deductible. Instead, the tax code provides for a system of capital allowances (see *Tax Depreciation (Capital Allowances)* below).

*Interest Payments.* Certain types of interest paid in an accounting period may be classified as a distribution and, consequently, are not treated as an allowable deduction. Interest paid by an Irish resident company to an EU resident company on or after 6 February 2003 is allowed as a trading deduction and is not treated as a distribution, subject to certain conditions and exceptions. For interest paid to 75%-nonresident affiliated companies in certain countries that entered into a tax treaty with Ireland before the introduction of the Irish corporation tax in 1976, by concession, the revenue authorities allow companies to continue to treat such interest as deductible interest rather than as a nondeductible distribution.

Banks may deduct interest payments made to nonresident group companies in calculating trading income (that is, the payments are not reclassified as distributions).

Companies may pay interest gross to banks and other financial service companies that make loans in the ordinary course of business. The company receiving the interest must notify the company making the payment that it is entitled to receive it gross and also notify the tax authorities of this entitlement.

Charges on income, such as certain interest expenses and patent royalties, are not deductible in the computation of taxable trading income, but may be deducted when paid as a charge. A tax deduction may be claimed for interest as a charge (as a deduction from total profits, which consists of income and capital gains) if the funds borrowed are used for the following purposes:

- Trade or business purposes;
- Acquisition of rental property;
- Acquisition of shares in a rental or trading company, or a company whose business principally consists of holding shares in trading or rental companies; or
- Certain other purposes specified in the law.

Deductions of interest as a charge have always been subject to certain conditions and antiavoidance measures. The 2003 Finance Act expanded the scope of the antiavoidance measures. These changes have added complexities to the implementation and maintenance of structures designed to qualify for this interest relief.

Under the measures, interest relief is restricted if the borrower receives, or is deemed to have received, a “recovery of capital.” A “recovery of capital” may arise in various situations, including, among others, the following:

- The borrower sells or is repaid any part of the share capital of the company in which it invests (or a connected company);
- The borrower receives repayment of a loan from the company in which it has invested (or a connected company); and
- The borrower receives consideration for assigning a debt due from the company in which it has invested (or a connected company).

Recoveries of capital now also include certain transactions by the borrower within the two-year period before the date of the granting of the loan.



Several exceptions are designed to facilitate bona fide transactions that would otherwise fall afoul of the antiavoidance provisions. These transactions include the following:

- The reinvestment of the funds for trade purposes;
- The acquisition of rental property; and
- The use of the funds for other purposes specified in the law.

The 2006 Finance Act added further restrictions with respect to certain related-party transactions. Interest on loans made on or after 2 February 2006 is not allowed as a tax deduction if the loan to the Irish company is from a connected party and if the loan is used, directly or indirectly, to acquire shares from a connected company.

A tax deduction for interest accrued on a liability between connected persons (including companies and individuals) may be deferred until such time when the interest is actually paid. This is a significant departure from the previous tax treatment of such interest and may adversely affect the tax liability of certain taxpayers.

One of the core principles in Irish tax legislation is that taxpayers are taxed on their profits as prepared under generally accepted accounting principles (GAAP). The accounting rules provide that expenses accruing in an accounting period are included in the profit-and-loss account for that period. This section introduces a general exception to this rule for interest.

Under prior law, a borrower could accrue an interest charge on a loan and claim a corresponding tax deduction, while the lender might not be subject to tax until the interest was actually paid. As a result of amendments introduced by the 2003 Finance Act, connected parties may no longer benefit from such arrangements. The new measure applies if all of the following circumstances exist:

- The interest is payable directly or indirectly to a connected person;
- The interest would, apart from the new measure, be allowable in computing the trading income of a trade carried on by the payer; and
- The interest is not trading income in the hands of the recipient, as determined under Irish principles.

Detailed rules provide for the apportionment of interest between allowable and nonallowable elements.

The 2004 Finance Act amended the above provisions to exclude interest payable by an Irish company to a connected nonresident corporate lender if the lender is not resident in Ireland and if the lender is not under the control, directly or indirectly, of Irish residents.

*Foreign-Exchange Gains and Losses.* Realized and unrealized foreign-exchange gains and losses relating to monies held or payable by a company for the purpose of its business, or to hedging contracts with respect to such items, are included in the taxable income of a company to the extent the gains and losses have been properly recorded in the company's accounts. If a company acquires a shareholding in a 25% subsidiary in a foreign currency and that acquisition is funded by a liability (borrowings, share capital or a

capital contribution) in the same foreign currency, the company can elect to match the foreign currency gain or loss on the asset (the shares in the 25% subsidiary) with the foreign currency gain or loss on the liability. As a result, the company is taxable only on the real economic gain or loss on the asset and not on currency movements against which it is economically hedged. A company must make the matching election within three weeks of the making of the investment.

The 2006 Finance Act introduced an additional foreign-exchange matching measure, which permits trading companies to elect to match exchange-rate movements on trading assets denominated in foreign currency against movements on redeemable share capital denominated in foreign currency. The election for this treatment must be made within three weeks of acquiring the relevant trading asset. This measure took effect on 1 January 2006.

**Inventories.** Stock is normally valued at the lower of cost or net realizable value. Cost must be determined on a first-in, first-out (FIFO) basis or some approximation of FIFO; the last-in, first-out (LIFO) basis is not acceptable.

**Provisions.** General provisions and reserves are not allowable deductions. Some specific provisions and reserves, including reserves for specific bad debts, may be allowed.

#### **Tax Depreciation (Capital Allowances)**

*Plant and Machinery.* Capital expenditure on plant and machinery and motor vehicles in use at the end of an accounting period is written off at an annual straight-line rate of 12.5%, effective from 4 December 2002 (previously, 20% from 1 January 2001 through 3 December 2002).

The maximum qualifying expenditure for capital allowances on motor vehicles is €24,000, effective for accounting periods ending on or after 1 January 2007 (the previous amount was €23,000). The government has announced that, effective from 1 July 2008, capital allowances and leasing expense deductions for new motor cars will be granted by reference to carbon dioxide emissions. As a result, some vehicles acquired on or after 1 July 2008 will not qualify for capital allowances or leasing expense tax deductions.

For plant and machinery purchased before 1 January 2001, the annual allowance was normally calculated at a rate of 15% under the straight-line method for the first six years, with the remaining 10% deducted in the seventh year. Capital allowances on cars were calculated at a rate of 20% under the reducing-balance method.

An immediate 100% write-off is allowed for capital expenditure on oil and gas exploration, development and abandonment, incurred under a license issued by the Minister for Energy.

*Immovable Property.* The basic annual rate is 4% for industrial buildings. Capital expenditure incurred on hotels on or after 4 December 2002 is written off over 25 years (previously 7 years). Certain transitional measures apply to existing approved projects if the expenditure is incurred on or before 31 December 2006, and reduced rates will apply in certain circumstances if the expenditure is incurred in the period 1 January 2007 through 31 July 2008.

*Urban Renewal Schemes.* Under existing urban renewal schemes, capital allowances apply to qualifying expenditure incurred in the period of 1 July 1999 through 31 July 2006. Unlike previous urban renewal schemes, specific reliefs are not available on a blanket basis, but are targeted at specific projects in the relevant areas. Ministerial orders have designated which reliefs apply to what areas, taking into account the integrated area plans produced by the relevant local authorities. The reliefs include accelerated capital allowances of up to 50% for commercial and industrial buildings. Transitional measures announced in the 2006 budget will apply to projects that meet existing scheme conditions. Full relief will be available for qualifying expenditure incurred on or before 31 December 2006, and reduced rates will apply to expenditure incurred in the period of 1 January 2007 through 31 July 2008.

Capital allowances on commercial premises under many urban renewal schemes are restricted to premises used for retailing or the supply of local goods and services. Commercial premises used for offices, mail-order businesses or financial services businesses do not qualify under the revised rules.

*Telecommunication Infrastructure.* The 2000 Finance Act introduced a capital allowance for capital expenditure incurred on the purchase of rights to use advanced telecommunication infrastructure. These intangible rights typically extend from 10 to 25 years. They are usually purchased with an upfront lump-sum payment. The expenditure incurred by a company on such rights may be written off over the life of the agreement relating to the use of the rights, with a minimum period of seven years. The allowance became effective on 28 March 2003. The allowance generally applies to expenditure incurred on or after 1 April 2000. However, the allowance does not apply to expenditure incurred on or after 6 February 2003 with respect to licenses issued on or after that date by the Commission for Communications Regulations under the Wireless Telegraphy Acts 1926 to 1988 or the Postal and Telecommunications Services Act 1983.

*Childcare Facilities.* A 100% capital allowance is available for childcare facilities.

*Other.* Capital allowances are also available on expenditure incurred for scientific research, patent rights, dredging, mining development, ships, agricultural buildings, private nursing homes, and petroleum exploration, development and production. Capital allowances are also available for expenditure incurred on private hospitals, effective from 15 May 2002. Subject to certain transitional provisions, expenditure on the following will no longer qualify for relief: park and ride facilities; multi-story car parks, third-level education buildings; and sports injury clinics.

On the disposal of plant and machinery, a balancing charge or allowance applies, depending on the amount received on disposal compared with the written-down value of the asset. Balancing charges are not imposed with respect to plant and machinery if the proceeds from the disposal are less than €2,000.

**Research and Development Expenditures.** The 2004 Finance Act introduced a corporation tax credit of 20% for incremental qualifying research and development (R&D) expenditure incurred by

companies for R&D activities carried on in the EEA. This credit is granted in addition to any existing deduction or capital allowances for R&D expenditure. As a result of this credit, companies may enjoy an effective benefit of up to 32.5% of R&D expenditure. The relief applies from 1 January 2004.

For relevant periods commencing before 1 January 2010, the base year used to calculate incremental expenditure is 2003. In December 2007, the government announced an extension of the use of 2003 as a base year to 2013. Any increase in the period between the base year and the relevant period makes it more likely that companies will incur incremental R&D expenditure. In particular, start-up companies or companies with no presence in Ireland in 2003 will have no base-year expenditure.

**Relief for Losses.** Trading losses and charges incurred by a company in an accounting period in a trading activity that is not subject to the 25% corporation tax rate can only be offset against profits of that accounting period or the preceding accounting period to the extent that the profits consist of trading income not subject to such rate. Any unused trading losses may be carried forward to offset future trading income derived from the same trade, regardless of the nature of these trading losses.

Relief may be available through a reduction of corporation tax on a value basis. For example, in 2007, when the standard corporation tax rate on trading income was 12.5%, 12.5% of the trading loss may be offset against the corporation tax liability of a company with respect to profits from all sources. The full amount of the trading loss that is so utilized is regarded as being used up for purposes of calculating losses that may be carried forward. In effect, a company needs trading losses equal to twice the amount of its passive income to eliminate its tax liability on such income. Manufacturing losses are also usable on a value basis.

**Groups of Companies.** Certain tax reliefs are available to a group of companies that meet the following requirements:

- The group companies have a minimum share relationship of 75%;
- The parent company is entitled to 75% of distributable profits; and
- The parent company is entitled to 75% of assets available for distribution on a winding up.

Such companies may transfer surplus losses and excess charges on income. Surplus losses of companies owned by a consortium may also be transferred (for further details concerning consortiums, see Section B).

Group and consortium relief are available if all of the companies in the group or consortium are resident in an EEA member country (except Liechtenstein). Before the 2007 Finance Act, loss relief was restricted to losses incurred in a business carried on by a company subject to Irish corporation tax. However, effective from 1 January 2006, group relief is available for certain “trapped” trading losses incurred by non-Irish 75% subsidiaries resident in an EEA member state (except Liechtenstein). Losses that can be used elsewhere are ineligible for surrender.

In a 75% group, assets may be transferred without generating a chargeable gain. An asset retains its tax value while it is held within the group. The tax value is generally based on original cost; for assets acquired before 6 April 1974, the tax value is computed with reference to the market value on that date. If an asset is transferred to a company that leaves the group within 10 years after the transaction, the asset is deemed to be disposed of at the time the company leaves the group.

A nonresident company that is resident in an EEA country (except Liechtenstein) may be taken into account in determining whether a group exists for chargeable gains purposes. An Irish branch of a company resident in an EEA country (except Liechtenstein) that is a member of a group may transfer assets to another member of a group on a tax-neutral basis. Any gain arising on the transfer is not taxable until the asset is sold outside the group. To qualify for such relief, the following conditions must be satisfied:

- Each of the companies in the group must be resident in Ireland or in an EEA country (except Liechtenstein);
- Any companies not resident in Ireland must be carrying on a trade in Ireland through a branch; and
- The transferred asset must be a chargeable asset for CGT purposes in Ireland.

Dividends paid between Irish resident companies are not subject to DWT (see Section B) if the appropriate declarations are made. However, effective for distributions made on or after 6 April 2001, a 51% subsidiary resident in Ireland may pay dividends free of DWT without the parent company making a formal declaration to the subsidiary that it is an Irish resident company. Withholding tax is not imposed on interest and royalty payments between members of a 51% group.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on any supply of goods or services, other than an exempt supply made in or deemed to be made in Ireland, and on imports from other than EU member states at the point of entry	
Standard rate	21
Other rates	0/4.8/5.2/13.5
Stamp duty, on certain documents (maximum rate)	9
Pay-related social insurance (PRSI) and income levies (for the period ending 31 December 2008), on employees' salaries; paid by	
Employers	
For employees earning a weekly salary of more than €356; on each employee's salary without limit	10.75
For employees earning a weekly salary of €356 or less	8.5
Employees	
On annual salary up to €50,700 (for 2008)	6

Nature of Tax	Rate (%)
(The PRSI component of this rate is 4%. In calculating the salary subject to PRSI, an individual may deduct an allowance of €127 per week, up to a maximum of €6,604 per year. The allowance is deductible on a noncumulative basis. Consequently, if an employee earns less than the allowance in one week, he or she may not carry forward the surplus allowance to the following weeks.)	
On annual salary in excess of €50,700 (for 2008) (Rate increases by 0.5% for income in excess of €1,925 per week [€100,100 per year])	2

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Foreign-exchange controls are not imposed, except in very limited circumstances at the discretion of the Minister for Finance. For example, the minister may impose foreign-exchange controls to comply with EU law or a United Nations resolution.

**Debt-to-Equity Ratios.** No thin-capitalization rules exist, but interest payments to 75%-nonresident affiliated companies may be treated as distributions of profit and consequently are not deductible (for details regarding this rule, see Section C).

**Controlled Foreign Companies.** No controlled foreign company (CFC) rules exist in Ireland.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends (a) %	Interest %	Royalties (c) %
Australia	0	0/10 (b)	10
Austria	0	0	0
Belgium	0	0/15 (b)(m)	0
Bulgaria	0	0/5 (b)(e)	10
Canada	0	0/10 (b)(l)	0/10 (d)
Chile (n)	0	0/5/15 (b)	5/10 (f)
China	0	0/10 (b)(e)	6/10 (j)
Croatia	0	0	0
Cyprus	0	0	0
Czech Republic	0	0	0/10 (m)
Denmark	0	0	0
Estonia	0	0/10 (b)(e)(m)	0/5/10 (f)(m)
Finland	0	0	0
France	0	0	0
Germany	0	0	0
Greece	0	0/5 (b)(m)	0/5 (m)
Hungary	0	0	0
Iceland	0	0	10
India	0	0/10 (b)(e)	10 (k)
Israel	0	0/10 (b)	10
Italy	0	0/10 (b)(m)	0

	<b>Dividends (a)</b>	<b>Interest</b>	<b>Royalties (c)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Japan	0	0/10 (b)	10
Korea	0	0	0
Latvia	0	0/10 (b)(m)	0/5/10 (f)(m)
Lithuania	0	0/10 (b)(m)	0/5/10 (f)(m)
Luxembourg	0	0	0
Malaysia	0	0/10 (b)	8
Mexico	0	0/5/10 (b)(g)	10
Netherlands	0	0	0
New Zealand	0	0/10 (b)	10
Norway	0	0	0
Pakistan	0	0	0
Poland	0	0/10 (b)(m)	0/10 (m)
Portugal	0	0/15 (b)(m)	0/10 (m)
Romania	0	0/3 (b)(i)	0/3 (h)
Russian Federation	0	0	0
Slovak Republic	0	0	0/10 (h)(m)
Slovenia	0	0/5 (b)(e)(m)	0/5 (m)
South Africa	0	0	0
Spain	0	0	0/5/8/10 (m)
Sweden	0	0	0
Switzerland	0	0	0
United Kingdom	0	0	0
United States	0	0	0
Zambia	0	0	0
Nontreaty countries	20 (o)	20 (b)(m)	20 (m)

- (a) Withholding tax at a rate of 20% applies to dividends distributed on or after 6 April 2001. The table assumes that the recipient of the dividends is not a company controlled by Irish residents (that is, the domestic measure providing that DWT is not imposed on payments to residents of treaty countries applies). If domestic law allows the imposition of DWT, a refund of the DWT may be obtained under the terms of an applicable tax treaty.
- (b) Interest is exempt from withholding tax if it is paid by a company or collective-investment undertaking in the ordinary course of its business to a company resident in an EU member country or a country with which Ireland has entered into a tax treaty. Ireland has not entered into a tax treaty with Malta. Consequently, interest payments described above that are made to Maltese companies are normally not subject to withholding tax even though a tax treaty is not yet in force. (Malta joined the EU on 1 May 2004, together with nine other Accession States.)
- (c) Under Irish domestic law, withholding tax on royalties applies only to patent royalties and to other payments regarded as "annual payments" under Irish law.
- (d) The normal withholding tax rate for royalties is 10%. However, the following royalties are exempt unless the recipient has a permanent establishment in Ireland and the income is derived there: copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or artistic works (but not including royalties paid for motion picture films or for works on film or videotape or other means of reproduction for use in connection with television broadcasting); and royalties for the use of, or the right to use, computer software or patents or for information concerning industrial, commercial or scientific experience (but not including any such royalties in connection with rental or franchise agreements).
- (e) The 0% rate applies in certain circumstances, such as if the interest is paid by, or received from, a central bank or local authority.
- (f) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (g) The 0% rate applies in certain circumstances, such as if the interest is paid by or received from a central bank or local authority or if it is received by an exempt approved pension fund. The 5% rate applies if the beneficial owner of the interest is a bank. The 10% rate applies to other interest.

- (h) A 0% rate applies to royalties for the use of copyrights of literary, artistic or scientific works, including motion pictures, film recordings on tape, other media used for radio or television broadcasting or other means of reproduction or transmission.
- (i) The 0% rate applies to interest paid to banks or financial institutions, interest paid on loans with a term of more than two years and interest paid in certain other circumstances.
- (j) The withholding tax rate for royalties is 10%, but only 60% of royalties for the use of, or right to use, industrial, commercial or scientific equipment is taxable.
- (k) This rate also applies to technical services fees.
- (l) The normal withholding tax rate for interest is 10%, but a 0% rate applies in certain circumstances.
- (m) Ireland has implemented Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between 25%-associated companies of different EU member states. The 2005 Finance Act extended these benefits to Switzerland. If the directive applies, the withholding tax rate is reduced to 0%.
- (n) The Chile treaty was signed on 5 June 2005, but it is not yet in force.
- (o) Irish domestic law may provide for an exemption from DWT under certain circumstances (see Section B).

Ireland is negotiating double tax treaties with Argentina, Egypt, Georgia, Kuwait, Macedonia, Malta, Moldova, Morocco, Serbia, Singapore, Thailand, Tunisia, Turkey, Ukraine and Vietnam. Existing treaties with Cyprus, France, Germany, Italy, Korea and South Africa are in the process of renegotiation.

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## ISLE OF MAN

(Country Code 44)

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### A. At a Glance

Resident Corporation Income Tax Rate (%)	0 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0 (a)
Corporate Charge (Annual)	£250
Withholding Tax (%)	
Dividends	0
Interest	0 (b)
Royalties	0



## Net Operating Losses (Years)

Carryback	1
Carryforward	Unlimited

- (a) The standard 0% rate of corporate income tax applies to all profits derived by companies except for profits arising from land and property in the Isle of Man or certain banking business in the Isle of Man, which is subject to tax at a rate of 10%.
- (b) Under the provisions of the European Union (EU) Savings Directive, withholding tax may be imposed on interest paid to individuals resident in the EU.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies resident in the Isle of Man are subject to income tax on their worldwide income, but relief from double taxation is available (see *Foreign Tax Relief* below). A non-resident company with a branch carrying on a trade in the Isle of Man is subject to tax on the income of the branch. A company is resident in the Isle of Man if it is incorporated in the Isle of Man or if the central management and control of the company is exercised there.

**Rates of Corporation Tax.** Effective from 6 April 2006, the standard rate of corporate income tax is 0%. This rate applies to all profits derived by trading and investment companies, except for profits arising from land and property in the Isle of Man or certain banking business in the Isle of Man, which is subject to tax at 10%. Companies may also elect to be taxed at the 10% rate. The standard 0% rate replaces the special regimes under prior law, such as the Exempt Company regime and the International Company regime. However, companies already subject to a special regime were permitted to continue under the special regime until 5 April 2007. Effective from 6 April 2007, such companies automatically fell into the standard 0% rate regime.

**Annual Corporate Charge.** The annual Corporate Charge of £250, which is effective from 6 April 2006, applies to all companies resident in the Isle of Man at some point in the tax year. Effective from 6 April 2007, the corporate charge is paid as part of the companies' annual accounts filing fee.

**Distributable Profits Charge.** The Distributable Profits Charge (DPC) was introduced to prevent Isle of Man resident individuals from using companies subject to tax at 0% to avoid tax. The DPC does not apply to companies that do not have any Isle of Man resident "members" or to companies listed on a recognized stock exchange. For this purpose, a "member" is an individual with a legal, equitable or contractual interest in the company (for example, a shareholder). Ownership can be traced back through any number of intermediate entities, but the Assessor of Income Tax normally looks only at the immediate shareholders and accepts a declaration from the company that the company does not have any Isle of Man resident members. The DPC is imposed at a rate of 18% on unlisted companies with Isle of Man resident members that do not distribute a specified percentage of their profits. The DPC applies to that percentage of profits. The specified percentages are 55% for trading profits and 100% for investment profits. However, a DPC credit is attached to the amount of any dividend paid. The DPC does not apply to profits subject to tax at the 10% rate, or to profits subject to foreign tax at a rate of 18% or more.

**Special Types of Companies.** Special types of companies in the Isle of Man are described briefly below.

*Funds Industry.* Management fees paid to managers of Experienced Investor Funds and Professional Investor Funds are exempt for value-added tax (VAT) purposes.

Overseas funds may be administered in the Isle of Man without being subject to Isle of Man regulations if they are incorporated in a jurisdiction with an appropriate regulatory framework.

*Limited Liability Companies.* The Limited Liability Companies Act 1996 allows for the formation of limited liability companies (LLCs). The liability of the members of an LLC is limited to the members' contributions to capital.

For Manx tax purposes, an LLC is treated like a partnership. Consequently, an LLC's profits are allocated among its members for tax purposes.

*New Manx Vehicles.* The Companies Act 2006 introduced a new Isle of Man international company known as the New Manx Vehicle (NMV), effective from 1 November 2006. The NMV is subject to simplified corporate filing requirements and is designed to be flexible and inexpensive to administer. It is taxed in the same manner as normal Isle of Man companies.

**Capital Gains.** The Isle of Man does not impose a Capital Gains Tax.

**Administration.** For accounting periods ending after 5 April 2007, tax returns must be filed within 12 months of the accounting year-end, and any tax payable is due at the same time. In certain circumstances, companies wholly subject to the 0% rate file shortened tax returns.

**Withholding Taxes.** For the 2007-08 tax year and future tax years, no withholding tax is imposed on dividends, interest and royalties paid to Isle of Man and non-Isle of Man residents. However, a 10% withholding tax is imposed on rent paid by companies to nonresident companies. Under the European Union (EU) Savings Directive, withholding tax may apply on interest payable to individuals resident in the EU, unless the individual opts for the exchange of information with his or her home jurisdiction.

**Foreign Tax Relief.** Foreign tax on income of a resident company may be credited against Manx income tax on the same profits. Foreign tax relief cannot exceed the income tax assessed by the Isle of Man on those profits.

### **C. Determination of Trading Income**

**General.** The tax assessment is based on financial accounts prepared using generally accepted accounting principles, subject to certain adjustments and provisions.

Expenses must be incurred wholly and exclusively for the purpose of the trade and in acquiring income. Effective from 6 April 2007, dividends are no longer deductible in calculating taxable profit.

**Inventories.** Inventory is normally valued at the lower of cost or net realizable value. Cost must be determined on a first-in, first-out (FIFO) basis; the last-in, first-out (LIFO) basis is not acceptable.

### **Capital Allowances (Tax Depreciation)**

*Plant and Machinery.* A first-year allowance of up to 100% may be claimed. Annual writing-down allowances of 25% may also be claimed.

*Motor Vehicles.* Expenditures on motor vehicles qualify for an annual allowance of 25% of the declining balance. The maximum annual allowance is £3,000.

*Industrial Buildings, Agricultural Buildings and Tourist Premises.* A 100% initial allowance may be claimed on capital investment to acquire, extend or alter a qualifying industrial building, agricultural building or tourist facility. This allowance is granted on expenditures in excess of any government grants received.

For tourist premises, an additional capital allowance of up to 50% is available in each of the three years after the 100% allowance is claimed, subject to the level of government grants received and the period in which the capital expenditure is incurred.

*Disposals.* On the ultimate disposal of assets on which capital allowances have been claimed, an adjustment is made by add-back or further allowance to reflect the net cost to the company of the asset.

**Relief for Trading Losses.** Trading losses may be used to offset other income of the year in which the loss was incurred or income of the preceding year if the same trade was carried on, or losses may be carried forward, without time limit, to offset future income from the same trade. Special rules apply to the carryback of losses on commencement or cessation of the trade.

Companies may also surrender losses to 75%-group companies. A recipient company can use surrendered losses only against profits earned in the same year of assessment.

New corporate income tax legislation, which is effective from 6 April 2006, has introduced a change in the loss relief provisions. Under the new legislation, the loss relief rules described above continue to apply, but relief is now allowable only against profits chargeable at the same rate of tax. Losses arising on activities subject to tax at the rate of 0% may not be relieved against profits taxed at 10%. If losses are brought forward from the 2005-06 tax year, they are allocated to future profits chargeable to tax at 0% and 10% on a pro rata basis, unless computations agreed to by the tax authorities support a specific method of loss allocation.

### **D. Other Significant Taxes**

The Isle of Man and the United Kingdom are considered one area for VAT purposes, and VAT is levied in the Isle of Man at the same rates as in the United Kingdom. The Customs and Excise Division in the Isle of Man operates independently from the United Kingdom, but under similar legislation.

Under Protocol 3 of the U.K.'s Treaty of Accession to the EU, the Isle of Man enjoys the benefits of being within Europe for financial services, customs and VAT purposes, but outside the United Kingdom and the EU with respect to direct taxation and legal and regulatory matters. This makes it possible to operate businesses from the Isle of Man that are tax-exempt, but VAT-registered. It allows U.K. inward investors to arrange for VAT registration in the Isle of Man without the risk of a taxable presence in the United Kingdom.

The Isle of Man has the same system for National Insurance contributions as the United Kingdom, but the contributions are calculated at lower rates.

## E. Miscellaneous Matters

**Antiavoidance Provisions.** The Assessor of Income Tax has the authority to make an assessment or an additional assessment in situations in which the Assessor considers Manx tax to have been avoided. Appeals are made to the Income Tax Commissioners. No assessment is made if the person involved persuades the Assessor that either of the following conditions was satisfied:

- The purpose of avoiding or reducing income tax liability was not the primary purpose or one of the primary purposes for which the transaction was carried out; or
- The transaction was a bona fide commercial transaction and was not designed for the purpose of avoiding or reducing income tax liability.

**Foreign-Exchange Controls.** The Isle of Man does not impose any foreign-exchange controls.

## F. Tax Treaties

The Isle of Man has signed several tax agreements with the Netherlands, including an agreement providing that an Isle of Man company subject to the 0% rate of tax qualifies for the Dutch participation exemption if certain other conditions are satisfied.

The Isle of Man has also entered into a tax treaty with the United Kingdom.

The Isle of Man does not impose withholding tax on payments of dividends, interest and royalties. However, under the EU Savings Directive, withholding tax may be imposed on interest paid to individuals resident in the EU (see Section B).

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## A. At a Glance

Corporate Income Tax Rate (%)	27 (a)
Capital Gains Tax Rate (%)	25/27 (b)
Branch Tax Rate (%)	27 (a)
Withholding Tax (%)	
Dividends	0/4/15/20/25 (c)(d)(e)
Interest	15/20 (c)(d)(f)(g)(h)
Royalties from Patents, Know-how, etc.	25 (c)(d)(f)
Branch Remittance Tax	0 (i)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) This is the regular company tax rate for profits and real capital gains for 2008. The rate is scheduled to decrease to 26% for 2009 and to 25% for 2010 and future years. Company tax rates ranging from 0% to 25% are available for privileged enterprises and approved enterprises or properties, and in other cases (for details, see Section B).
- (b) See Section B for details.
- (c) The withholding tax is subject to applicable tax treaties.
- (d) The withholding tax applies to nonresident companies and to individuals.
- (e) This is a final tax. For details regarding these rates, see Section B.
- (f) In principle, the withholding taxes on interest and royalties are not final taxes, but nonresidents without an Israeli presence generally do not take any further action.
- (g) Alternatively, nonresident lenders may apply to pay regular company tax on their lending profit margin after deducting proven lending expenses.
- (h) At the discretion of the tax authorities, interest paid to recognized foreign financial institutions that lend funds to projects benefiting Israel's economy may be subject to a reduced rate of 15% of the amount by which the loan interest exceeds the London interbank offer rate (LIBOR).
- (i) A 15% tax is imposed on the approved enterprise profits and approved property profits of a branch after deducting company tax. In principle, this tax is payable together with the company tax, but the Tax Commissioner may allow payment of this tax on approved enterprise profits and approved property profits to be deferred until the relevant branch profits are withdrawn from Israeli business operations. This tax may be overridden by a tax treaty.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to Israeli tax on their worldwide income. Nonresident companies are subject to Israeli tax on income accrued or derived in Israel, unless otherwise provided for in an applicable tax treaty.

A company is considered resident in Israel for Israeli tax purposes if either of the following applies:

- It is incorporated in Israel; or
- Its business is controlled and managed in Israel.

**Rates of Corporate Tax.** The regular rate of company tax is 27% for 2008. The rate is scheduled to decrease each year until it reaches 25% for 2010. The table below shows the company tax rates for 2008 through 2010. In addition, the table sets forth the combined

Israel taxes on profits, taking into account the 25% withholding tax on dividends paid to shareholders holding 10% or more of the company (material shareholders) and the 20% withholding tax imposed on shareholders holding less than 10% of the company.

Year	Company	Combined Tax Rate	
	Tax Rate	Material Shareholders	Other Shareholders
	%	%	%
2008	27	45.25	41.6
2009	26	44.5	40.8
2010 onwards	25	43.75	40

The dividend withholding tax rates reflected in the above table are subject to applicable tax treaties.

**Tax Reductions and Exemptions.** The major tax reductions and exemptions offered by Israel are described below.

*Privileged Enterprises and Approved Enterprises.* Companies in industry or tourism in Israel can choose between a tax holiday package for a privileged enterprise or a grant or low tax package for an approved enterprise.

A privileged enterprise may elect the tax holiday package without obtaining approval if certain conditions are met. These conditions include the requirement that a minimum qualifying investment be made in fixed assets in industry or in a hotel in Israel within a three-year period. The tax holiday applies to undistributed profits for 2 to 15 years, depending on the location and foreign ownership. Low company tax rates of 10% to 25% apply to distributed and subsequent profits. The period for these low rates ranges from 7 to 15 years.

Approved enterprises in a development area may receive fixed asset grants of 20% to 32%. In addition, approved enterprises may benefit from low company tax rates of 0% to 25% for a period of 7 to 15 years. Enterprises may be granted approval by the Investment Center until the end of 2007, unless this deadline is extended. This authority is expected to be renewed in 2008. Grant rates and rules may be amended according to proposals that are being formulated.

Privileged enterprises and approved enterprises must be competitive and not be overly dependent on the market of any one country.

Dividend withholding tax is imposed at a reduced rate of 4% or 15%, depending on the package selected. As a result, the combined company and dividend tax rate ranges from 15.04% to 36.25%.

Large investments (NIS 600 million to NIS 900 million [approximately US\$150 million to US\$225 million]) in privileged enterprises by large groups in certain areas of Israel may qualify for exemption from company tax for both retained and distributed profits, as well as for exemption from dividend withholding tax. To qualify as a large group, the groups must generate annual revenues exceeding NIS 13 billion to NIS 20 billion (approximately US\$3.25 billion to US\$5 billion).

An optional advance ruling procedure is available if investors want to determine eligibility for privileged enterprise benefits.

For a mixed or expanded enterprise, profit is allocated pro rata between the different parts of the enterprise based on the incremental revenues generated by each part. An enterprise is considered to be a mixed enterprise if it engages in more than one project and only some of the projects have approved or privileged status or if it engages in projects that began at different times.

Some of Israel's tax treaties include tax-sparing clauses under which regular Israeli taxes, rather than reduced Israeli taxes, may be credited against tax imposed on dividends received from an Israeli company in the investor's country of residence. As a result, the Israeli tax benefits may be partially or fully preserved for an investor in an Israeli privileged enterprise or approved enterprise.

*Eilat Free Port.* Corporate tax exemptions and other benefits are granted to authorized enterprises in the Eilat free port and free trade area.

*Other Incentives.* Approved industrial, commercial and residential rental properties qualify for reduced company tax rates on rental income (and on gains derived from sales of certain buildings that have a residential element; a building has a residential element if at least 70% of the floor space is rented for residential purposes for a prescribed number of years, according to detailed rules). The reduced rates range from 10% to 18%. A tax holiday or grants may be available to approved industrial properties, depending on their location.

Preferential tax treatment may also be allowed with respect to the following: Real Estate Investment Trust (REIT) companies; agriculture; oil; movies; international trading; research and development (R&D) financing; and nonresidents' bank accounts. Significant nontax incentives include financial support for the following: R&D; development of production prototypes; investment in new facilities or products to promote competition with foreign companies (trade exposure fund); exporters; export agents; equipment leasing to approved enterprises; and textile collections. Loans may also be available for small businesses.

Foreign resident investors may qualify for exemption from capital gains tax in certain circumstances (see *Capital Gains and Losses* below).

### **Capital Gains and Losses**

*Residents.* Resident companies are taxable on worldwide capital gains. Capital gains are divided into real and inflationary components. The following are descriptions of the taxation of these components:

- The time-based portion of real gains that accrue after 1 January 2003 is generally taxed at a rate of 25%. The regular company tax rate (27% for 2008) generally applies to the time-based portion of real gains that accrue before 1 January 2003.
- The inflationary component is exempt from tax to the extent that it accrued on or after 1 January 1994, and is generally taxable at a rate of 10% to the extent that it accrued before that date.

Notwithstanding the above, companies doing business in Israel are generally subject to tax at the regular company tax rate (27% for 2008) on gains derived from publicly traded securities of



Israeli or foreign companies. Full tax rates apply to depreciation recapture with respect to depreciable assets.

Capital losses may be used to offset capital gains derived in the same or future tax years without time limit. In each year, capital losses are first offset against real gains and then offset against inflationary amounts in accordance with the following ratio: NIS 3.5 of inflationary amounts per NIS 1 of capital losses. Capital losses from assets located abroad must be offset against capital gains on other assets abroad, then against capital gains from assets in Israel.

Gains derived from sales of Israeli real estate or from sales of an interest in a real estate association (an entity whose primary assets relate to Israeli real estate) are subject to Land Appreciation Tax at rates similar to those applicable to other capital gains. The time-based portion of real gains that accrue after 7 November 2001 may be taxed at a rate of 25%. The regular company tax rate (27% for 2008) applies to real gains accruing before 7 November 2001. Nevertheless, to encourage real estate transactions, the resulting tax liability is reduced by 20% for assets acquired in the period of 7 November 2001 through 31 December 2002. A reduction of 10% applies to the tax liability resulting from real estate acquired in 2003. Effective from 2004, no reduction in the tax liability is available unless the seller purchased the property during the 20% or 10% discount periods.

*Nonresidents.* Unless a tax treaty provides otherwise, in principle, nonresident companies are subject to Israeli tax on their capital gains relating to any of the following:

- An asset located in Israel.
- An asset located abroad that is primarily a direct or indirect right to an asset, inventory or real estate in Israel or to a real estate association (an entity whose primary assets relate to Israeli real estate). Tax is imposed on the portion of the consideration that relates to such property in Israel.
- Shares or rights to shares (for example, warrants and options) in an Israeli resident entity.
- A right to a nonresident entity that primarily represents a direct or indirect right to property in Israel. Tax is imposed on the portion of the consideration that relates to such property in Israel.

Foreign residents not engaged in business in Israel may qualify for exemption from capital gains tax on disposals of the following investments:

- Securities traded on the Tel-Aviv stock exchange;
- Securities of Israeli companies traded on a recognized foreign stock exchange; and
- Shares in a research-intensive company that were issued to the foreign resident investor by the company on or after 1 January 2003.

An exemption from Israeli capital gains tax is also available to investors in Israeli securities if they satisfy the following conditions:

- They have been resident for at least 10 years preceding the date of acquisition of the securities in a country that has entered into a tax treaty with Israel;
- They acquire the securities between 1 July 2005 and 31 December 2008; and
- They notify the Israeli Tax Authority of the acquisition within 30 days.

The above exemption does not apply to the following:

- Gains attributable to a permanent establishment (generally a fixed place of business) of the investor in Israel; and
- Shares of a company whose assets were principally Israeli real estate when the shares were acquired and in the two-year period preceding the date of the sale of the shares.

For purposes of the above exemption, if the investor is an entity, at least 75% of all means of control must be held by individuals resident in the treaty country in the 10-year period preceding the acquisition date of the investment. However, for an entity with shares publicly traded on a stock exchange outside Israel, shareholders holding less than 10% of the shares are deemed to be resident in the treaty country unless proven otherwise.

In addition, foreign residents not engaged in business in Israel are exempt from capital gains tax on gains derived with respect to venture capital funds that obtain an exemption ruling in advance from the Israeli tax authorities. To obtain such ruling, a fund must meet certain qualifying conditions, including a requirement that at least US\$10 million of the fund be devoted to Israel-related industrial or research-intensive companies.

In other cases, foreign resident companies pay capital gains tax in accordance with the rules and rates applicable to residents, as described above. However, nonresidents investing with foreign currency may elect to apply the relevant exchange rate rather than the inflation rate to compute the inflationary amount.

**Administration.** The Israeli tax year is normally the calendar year. However, subsidiaries of foreign publicly traded companies may sometimes be allowed to use a different fiscal year.

Companies are generally required to file audited annual tax returns and financial statements within five months after the end of their fiscal year, but extensions may be obtained.

Companies must normally file monthly or bimonthly reports and make payments with respect to the following taxes:

- Company tax advances, which are typically computed as a percentage of a company's sales revenues;
- Supplementary company tax advances with respect to certain nondeductible expenses;
- Tax withheld from salaries and remittances to certain suppliers; and
- Value-added tax (VAT).

Nonresidents are required to appoint an Israeli tax representative and VAT representative if any part of their activities is conducted in Israel. The VAT representative is deemed to be the tax representative if no other tax representative is appointed. The tax representative is empowered to pay tax out of the foreign resident's assets.

**Dividends.** A 4% or 15% withholding tax is generally imposed on dividends paid out of the income of a privileged enterprise or an approved enterprise or approved property. A 20% withholding tax is generally imposed on dividends paid out of other income (regular income). This rate is increased to 25% if the recipient is a 10%-or-greater shareholder. However, resident companies are exempt from company tax on dividends paid out of regular income that was accrued or derived from sources within Israel.

Companies are generally subject to tax at a rate of 25% on foreign dividend income that is paid from a foreign source or from income accrued or derived abroad (foreign-source income that is passed up a chain of companies).

**Israeli Holding Companies and Participation Exemption.** To qualify for the participation exemption, an Israeli holding company must satisfy various conditions, including the following:

- It must be incorporated in Israel;
- Its business is controlled and managed in Israel only;
- It may not be a public company or a financial institution;
- It must not have been formed in a tax-deferred reorganization; and
- For 300 days or more in the year, beginning in the year after incorporation, the holding company must have an investment of at least NIS 50 million in the equity of, or as loans to, the investee companies, and at least 75% of the holding company's assets must consist of such equity investments and loans.

In addition, the foreign investee company must satisfy the following conditions:

- It must be resident in a country that entered into a tax treaty with Israel, or it must be resident in a foreign country that had a tax rate for business activity of at least 15% on the date of the holding company's investment (however, it is not required that the investee company pay the 15% tax [for example, it obtains a tax holiday]).
- At least 75% of its income in the relevant tax year is accrued or derived from a business or one-time venture abroad.
- The Israeli holding company must hold an "entitling shareholding" in the investee company for at least 12 consecutive months. An "entitling shareholding" is a shareholding that confers at least 10% of the investee's profits. The entitling shareholding must span a period of at least 12 months that includes the date on which the income is received.

Effective from 1 January 2006, an Israeli holding company is exempt from tax on the following types of income:

- Capital gains derived from the sale of an entitling shareholding in an investee company;
- Dividends distributed during the 12-month minimum shareholding period with respect to an entitling shareholding in an investee company;
- Interest, dividends and capital gains derived from securities traded on the Tel-Aviv Stock Exchange; and
- Interest and indexation amounts received from Israeli financial institutions.

In addition, dividends paid by Israeli holding companies to foreign resident shareholders are subject to a reduced rate of dividend withholding tax of 5%.

**Foreign Tax Relief.** A credit for foreign taxes is available for federal and state taxes but not municipal taxes. Any excess foreign tax credit may be offset against Israeli tax on income from the same type in the following five tax years.

With respect to foreign dividend income, an Israeli company may receive a direct and an underlying tax credit for foreign taxes. The foreign dividend income is grossed up for tax purposes by

the amount of the creditable taxes. The following are the alternative forms of the credit:

- **Direct foreign tax credit only:** a 25% tax is imposed on foreign dividend income, and any dividend withholding tax incurred is creditable in Israel.
- **Direct and underlying foreign tax credit:** a 27% tax is imposed (in 2008) on foreign dividend income, and a credit is granted for dividend withholding tax and underlying corporate tax paid abroad by 25%-or-greater affiliates and their direct 50%-or-greater subsidiaries. If an underlying foreign tax credit is claimed, any excess foreign tax credit may not be used to offset company tax in future years.

Foreign residents that receive little or no relief for Israeli taxes in their home countries may be granted a reduced Israeli tax rate by the Minister of Finance.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements that are prepared in accordance with generally accepted accounting principles and are derived from acceptable accounting records. In principle, expenses are deductible if they are wholly and exclusively incurred in the production of taxable income. Various items may require adjustment for tax purposes, including depreciation, R&D expenses, and vehicle and travel expenses.

Payments subject to withholding tax, such as salaries, interest and royalties, are not deductible unless the requisite tax is withheld and paid to the tax authorities.

**Inventories.** In general, inventory may be valued at the lower of cost or market value. Cost may be determined using one of the following methods: actual; average; or first-in, first-out (FIFO). The last-in, first-out (LIFO) method is not allowed.

**Provisions.** Bad debts are deductible in the year they become irrecoverable. Special rules apply to employee-related provisions, such as severance pay, vacation pay, recreation pay and sick pay.

**Depreciation.** Depreciation at prescribed rates, based on the type of asset and the number of shifts the asset is used, may be claimed with respect to fixed assets used in the production of taxable income.

Accelerated depreciation may be claimed in many instances. Consequently, for assets acquired in 2007, industrial enterprises may depreciate new assets using the straight-line method at annual rates of 4% to 16% for buildings and 20% to 40% for equipment. Alternatively, they may depreciate equipment using the declining-balance method at rates ranging from 30% to 50%. It is anticipated that these rates will continue to apply in 2008. The following are some of the standard straight-line rates that apply primarily to nonindustrial companies.

<b>Asset</b>	<b>Rate (%)</b>
Mechanical equipment	7 to 10
Electronic equipment	15
Personal computers and peripheral equipment	33
Buildings (depending on quality)	1.5 to 4
Goodwill	10

**Groups of Companies.** Subject to certain conditions, consolidated returns are permissible for a holding company and its industrial subsidiaries if the subsidiaries are all engaged in the same line of production. For this purpose, a holding company is a company that has invested at least 80% of its fixed assets in the industrial subsidiaries and controls at least 50% (or two-thirds in certain cases) of various rights in those subsidiaries. For a diversified operation, a holding company may file a consolidated return with the subsidiaries that share the common line of production in which the largest amount has been invested.

Group returns may also be filed by an industrial company and industrial subsidiary companies if the subsidiaries are at least two-thirds controlled (in terms of voting power and appointment of directors) by the industrial company and if the industrial company and the subsidiaries are in the same line of production.

Detailed rules concerning the deferral of capital gains tax apply to certain types of reorganizations, including corporate mergers, divisions and shares-for-assets exchanges. In many cases, an advance ruling is necessary.

**Relief for Losses.** In general, business losses may be offset against income from any source in the same year. Unrelieved business losses may be carried forward for an unlimited number of years to offset business income, capital gains derived from business activities or business-related gains subject to the Land Appreciation Tax (see Section B). According to case law, the offset of losses may be disallowed after a change of ownership and activity of a company, except in certain bona fide circumstances.

Special rules govern the offset of foreign losses incurred by Israeli residents. Passive foreign losses (for example, relating to income from dividends, interest, rent or royalties) may be offset against current or future foreign passive income. Passive foreign rental losses arising from depreciation may also be offset against capital gains from the sale of the relevant foreign real property.

Active foreign losses (relating to a business or profession) may be offset against the following:

- Passive foreign income in the current year.
- Active Israeli income in the current year if the taxpayer so elects and if the foreign business is controlled and managed in Israel. However, in the preceding two years and in the following five years, foreign-source income is taxable up to the amount of the foreign loss.
- Active foreign income and business-related capital gains in future years.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT), standard rate	15.5
Wage and profit tax, imposed on financial institutions instead of VAT; this tax is imposed in addition to company tax	15.5
National insurance contributions on monthly employment income (subject to an upper income limit of NIS 35,760)	

Nature of Tax	Rate (%)
Employer payments	
Resident employees	4.14 to 5.68
Nonresident employees	0.59 to 0.80
Employee payments	
Resident employees	3.5 to 12
Nonresident employees	0.04 to 0.87
Payroll levy on salaries of foreign employees; levy does not apply if monthly salary exceeds NIS 15,074	10
Organizational levy, on monthly employment income of employees who are members of the Histadrut labor movement or who work in certain unionized workplaces; plans to extend the levy to other employees have not been implemented	0.95
Real property sales tax	
Standard rate	2.5
Certain homes	0
Other real estate acquired after 7 November 2001	0
Acquisition tax, imposed on purchasers of real estate rights; maximum rate	5
Annual municipal taxes on property	Various

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Israeli currency is the new Israel shekel (NIS).

On 14 May 1998, exchange control restrictions were abolished. However, transactional and periodic reporting requirements apply in certain circumstances, principally to Israeli residents if the amounts involved or overseas assets total over US\$5 million. These reports are filed with the Bank of Israel.

**Debt-to-Equity Rules.** No thin-capitalization rules are imposed in Israel. However, approved enterprises and approved properties (see Section B) must be at least 30% equity-financed if they received their approval before 1 April 2005.

**Transfer Pricing.** Transactions between related parties should be at arm's length. Detailed transfer-pricing regulations apply. Advance rulings may be requested regarding transfer pricing.

**Measures to Counteract Tax Planning Involving Foreign Companies.** Certain measures are designed to counteract tax planning involving foreign companies.

*Foreign Professional Companies.* A foreign professional company (FPC) is deemed to be controlled and managed in Israel, and, accordingly, taxable in Israel. A company is considered to be an FPC if a company meets all of the following conditions:

- It has five or fewer individual shareholders;
- It is owned 75% or more by Israeli residents;
- Most of its 10%-or-more shareholders conduct a special profession for the company; and
- Most of its income or profits are derived from a special profession.

The special professions include engineering, management, technical advice, financial advice, agency, law, medicine and many others.

**Controlled Foreign Corporations.** Israeli residents are taxed on deemed dividends received from a controlled foreign corporation (CFC) if they hold 10% or more of the CFC. A foreign company (or any other body of persons) is considered to be a CFC if all of the following conditions exist:

- The foreign company primarily derives passive income or profits that are taxed at a rate of 20% or less abroad.
- The foreign company's shares are not publicly traded, or less than 30% of its shares or other rights have been offered to the public.
- One of the following requirements is satisfied:
  - Israeli residents own either directly or indirectly more than 50% of the foreign company;
  - An Israeli resident owns over 40% of the foreign company, and together with a relative, owns more than 50% of the company; or
  - An Israeli resident has veto rights with respect to material management decisions, including decisions regarding the distribution of dividends or liquidation.

The shareholdings of the CFC are calculated as the higher of the following: the shareholdings at the tax year-end; or the shareholdings any day in the tax year plus any day in the following tax year. The deemed dividend is the taxpayer's share of passive undistributed income on the last day of the tax year. A deemed foreign tax credit is granted against tax on the deemed dividend. Tax on deemed dividends may be credited against tax on subsequent actual dividends or, to the extent that the credit is not utilized, against capital gains tax on a sale of shares in the CFC.

**Withholding Taxes on Overseas Remittances.** Israeli banks must withhold tax, generally at a rate of 25%, from most overseas remittances unless the remittances relate to imported goods. An exemption or a reduced withholding rate may be obtained from the Israeli tax authorities in certain circumstances, such as when a treaty applies or when the payments are for services that are rendered entirely abroad. Guidance is expected regarding the possibility of applying a 20% withholding tax rate to dividends and interest payments to recipients who hold under 10% of the payer entity.

**Free-Trade Agreements.** Israel has entered into free-trade agreements with Bulgaria, Canada, the European Free Trade Association, the European Union, Mexico, Romania, Turkey and the United States.

## F. Treaty Withholding Tax Rates

The following table provides Israeli withholding tax rates for payments of dividends, interest and royalties to residents of various countries. Exemptions or conditions may apply, depending on the terms of the particular treaty.

	Dividends	Interest	Royalties (a)
	%	%	%
Austria	25	15	10
Belarus	10	5/10 (c)	5/10 (aa)
Belgium	15	15	10
Brazil	10/15 (l)	15 (c)	10/15 (jj)
Bulgaria	10/12.5 (b)	5/10 (c)	12.5 (d)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties (a)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Canada	15	15	15
China	10	7/10 (e)	7/10 (f)
Croatia (pp)	5/10/15 (h)	0/5/10 (c)(oo)	5
Czech Republic	5/15 (g)	10	5
Denmark	25	25	10
Ethiopia (pp)	5/10/15 (h)	0/5/10 (c)(oo)	5
Finland	5/10/15 (h)	10 (i)	10
France	5/10/15 (h)	5/10 (i)(j)	10
Germany	25	15	5
Greece	25 (k)	10	10
Hungary	5/15 (g)	0	0
India	10	10	10
Ireland	10	5/10 (j)	10
Italy	10/15 (l)	10	10
Jamaica	15/22.5 (m)	15	10
Japan	5/15 (n)	10	10
Korea	5/10/15 (h)	7.5/10 (c)	2/5 (o)
Latvia (kk)	5/10/15 (h)	5/10 (c)	5
Lithuania (kk)	5/10/15 (h)	0/10 (q)(oo)	5/10 (u)
Luxembourg (ll)	5/10/15 (h)	5/10 (c)	5
Mexico	5/10 (p)	10 (q)	10
Moldova (pp)	5/10 (qq)	0/5 (q)(mm)	5
Netherlands	5/10/15 (h)	10/15 (r)	5
Norway	25	25	10
Philippines	10/15 (s)	10	10/15 (t)
Poland	5/10 (g)	5	5/10 (u)
Romania	15	5/10 (v)	10
Russian Federation	10	10 (q)	10
Singapore	5/10 (g)	7 (c)	5 (x)
Slovak Republic	5/10 (g)	2/5/10 (y)	5
Slovenia (rr)	5/10/15 (h)	0/5 (q)(mm)	5
South Africa	25	25	0
Spain	10	5 (z)	5/7 (aa)
Sweden	0 (w)	25	0
Switzerland	5/10/15 (h)	5/10 (c)	5
Thailand	10/15 (bb)	10/15 (cc)	5/15 (dd)
Turkey	10	10 (ee)	10
Ukraine (kk)	5/10/15 (h)	5/10 (c)	10
United Kingdom	15	15	0
United States	12.5/15/25 (ff)	10/17.5 (gg)	10/15 (hh)
Uzbekistan	10	10	5/10 (ii)
Nontreaty countries (nn)	25	25	25

(a) Different rates may apply to cultural royalties.

(b) The 10% rate applies to dividends that are paid out of profits taxed at a reduced company tax rate. For other dividends, the withholding tax rate may not exceed one-half the nontreaty withholding tax rate; because the nontreaty withholding tax rate for dividends is currently 25%, the treaty withholding tax rate is 12.5%.

(c) Interest on certain government loans is exempt. The rate of 5% (Belarus, Bulgaria, Croatia, Ethiopia, Latvia, Luxembourg, Switzerland and Ukraine) or 7.5% (Korea) applies to interest on loans from banks or financial institutions. The 10% rate (Brazil, 15%; and Singapore, 7%) applies to other interest payments.

(d) The withholding tax rate may not exceed one-half the nontreaty withholding tax rate; because the nontreaty withholding tax rate is currently 25%, the treaty withholding tax rate is 12.5%.

(e) The 7% rate applies to interest paid to banks or financial institutions.



- (f) Under a protocol to the treaty, the 7% rate is the effective withholding rate for amounts paid for the use of industrial, commercial or scientific equipment.
- (g) The 5% rate applies if the recipient holds directly at least 10% of the capital of the payer (Hungary, Singapore and Slovak Republic) or at least 15% of the capital of the payer (Poland), or if the recipient is a company that holds at least 15% of the capital of the payer (Czech Republic).
- (h) The 5% rate applies if the dividends are paid out of profits that were subject to the regular company tax rate (currently, 27%) and if they are paid to a corporation holding at least 10% (Ethiopia, Finland, France, Korea, Latvia, Lithuania, Luxembourg, Slovenia and Switzerland) or 25% (Croatia, Netherlands and Ukraine) of the payer's capital. The 10% rate applies to dividends paid to such a corporation (under the Ukraine treaty, a corporation holding at least 10%) out of profits that were taxed at a reduced rate of company tax. The 15% rate applies to other dividends.
- (i) Alternatively, an interest recipient may elect to pay regular tax (currently, the company tax rate is 27%) on the lending profit margin.
- (j) The 5% rate applies to interest on a bank loan as well as to interest in connection with sales on credit of merchandise between enterprises or sales of industrial, commercial or scientific equipment.
- (k) Dividends are subject to tax at the rate provided under domestic law, which is currently 25% in Israel.
- (l) The 10% rate applies if the recipient holds at least 25% of the capital of the payer.
- (m) The 15% rate applies if the recipient is a company that holds directly at least 10% of the voting power of the payer.
- (n) The 5% rate applies to corporate recipients that beneficially own at least 25% of the voting shares of the payer during the six months before the end of the accounting period for which the distribution is made.
- (o) The 2% rate applies to royalties for use of industrial, commercial or scientific equipment.
- (p) The 5% rate applies if the recipient holds at least 10% of the payer and if the payer is not an Israeli resident company that paid the dividends out of profits that were taxed at a reduced tax rate. The 10% rate applies to other dividends.
- (q) Interest on certain government loans is exempt.
- (r) The 10% rate applies to a Dutch bank or financial institution.
- (s) The 10% rate applies if the recipient holds at least 10% of the capital of the payer.
- (t) The 15% rate applies unless a lesser rate may be imposed by the Philippines on royalties derived by a resident of a third country in similar circumstances. The Philippines-Germany treaty specifies a 10% withholding tax rate on industrial and commercial royalties. Consequently, a 10% rate might apply to these royalties under the Israel-Philippines treaty.
- (u) The 5% rate applies to royalties for the use of industrial, commercial or scientific equipment.
- (v) The 5% rate applies to interest on bank loans as well as to interest in connection with sales on credit of merchandise between enterprises or sales of industrial, commercial or scientific equipment. Interest on certain government loans is exempt.
- (w) Under a disputed interpretation of the treaty, a 15% rate may apply to dividends paid out of the profits of an approved enterprise or property.
- (x) The tax rate on the royalties in the recipient's country is limited to 20%.
- (y) The 2% rate applies to interest paid on certain government loans. The 5% rate applies to interest received by financial institutions that grant loans in the course of its usual business activities. The 10% rate applies to other interest payments.
- (z) This rate applies to interest in connection with sales on credit of merchandise between enterprises and sales of industrial, commercial or scientific equipment, and to interest on loans granted by financial institutions.
- (aa) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment (and road transport vehicles under the Belarus treaty), or for copyrights of literary, dramatic, musical or artistic works. The rate for other royalties is 10% (Belarus) or 7% (Spain).
- (bb) The 10% rate applies if the recipient is an Israeli resident or if the recipient is a Thai resident holding at least 15% of the capital of the payer.
- (cc) The 10% rate applies to interest paid to banks or financial institutions, including insurance companies.
- (dd) The 5% rate applies to royalties paid for the use of literary, artistic or scientific works, excluding radio or television broadcasting works.
- (ee) Interest on certain government loans is exempt. The 10% rate applies to all other interest payments.

- (ff) The 12.5% rate applies to dividends paid by a company that does not have an approved enterprise or approved property in Israel to U.S. corporations that own at least 10% of the voting shares of the payer, subject to certain conditions. The 15% rate applies to dividends paid out of the profits of an approved enterprise or property. The 25% rate applies to other dividends.
- (gg) The 10% rate applies to interest on a loan from a bank, savings institution, insurance company or similar company. The 17.5% rate applies to other interest. Alternatively, an interest recipient may elect to pay regular tax (the company tax rate is currently 27%) on the lending profit margin.
- (hh) The 10% rate applies to copyright and film royalties. The 15% rate applies to industrial and other royalties.
- (ii) The 5% rate applies to royalties paid for the use of literary, artistic or scientific works, excluding cinematographic films. The 10% rate applies to other royalties.
- (jj) The 15% rate applies to royalties for the use of, or the right to use, trademarks. The 10% rate applies to other royalties.
- (kk) This treaty is effective from 1 January 2007.
- (ll) The Implementation Order was issued 8 August 2006, with a retroactive effective date of 1 January 2004.
- (mm) The 0% rate applies to interest with respect to a loan, debt-claim or credit guaranteed or insured by an institution for insurance or financing of international trade transactions that is wholly owned by the other contracting state (Moldova) or acts on behalf of the other contracting state (Slovenia). The 5% rate applies to other interest.
- (nn) See Sections A and B. Guidance is expected regarding the possibility of applying a 20% withholding tax rate to dividends and other payments to recipients who hold under 10% of the payer entity.
- (oo) The 0% rate applies to interest with respect to sales on credit of merchandise or industrial, commercial or scientific equipment. Under the Lithuania treaty, such credit must not exceed six months and related parties are excluded.
- (pp) This treaty is effective from 1 January 2008.
- (qq) The 5% rate applies if the dividends are paid to a corporation holding at least 25% of the payer's capital. The 10% rate applies to other dividends.
- (rr) This treaty has been ratified. It is expected to be effective from 1 January 2008.

Israel is negotiating tax treaties with Kazakhstan and Portugal.

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*This chapter reflects the most significant changes to the Italian Income Tax Code that are contained in the 2008 Budget Law. These changes are effective for fiscal years beginning on or after 1 January 2008. Because of the significant tax changes that are contained in the 2008 Budget Law, readers should obtain further information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	27.5 (a)
Capital Gains Tax Rate (%)	0/27.5 (b)
Branch Tax Rate (%)	27.5 (a)
Withholding Tax (%)	
Dividends	0/12.5/27 (c)(d)
Interest	0/12.5/27 (e)(f)
Royalties from Patents, Know-how, etc.	22.5/30 (f)(g)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (h)

- (a) Under the 2008 Budget Law, the corporate income tax (*imposta sul reddito delle società*, or IRES) rate is reduced from 33% to 27.5%. A regional tax on productive activities (*imposta regionale sulle attività produttive*, or IRAP) is imposed on the net value of production. For further details regarding IRAP, see Section B.
- (b) For details concerning capital gains taxation, see Section B.
- (c) Withholding tax is not imposed on dividends paid to resident companies. The 12.5% rate applies to dividends paid to resident individuals with nonsubstantial participations (for information on substantial and nonsubstantial participations, see discussion of capital gains taxation in Section B). The 27% rate applies to dividends paid to nonresidents. Nonresidents may be able to obtain a refund of the withholding tax equal to the amount of foreign tax paid on the dividends. However, the maximum refund is 4/9 of the withholding tax paid. Tax treaties may provide for a lower tax rate. Under the 2008 Budget Law, a 1.375% rate applies under certain circumstances (see Section B).
- (d) Under the European Union (EU) Parent-Subsidiary Directive, dividends distributed by an Italian subsidiary to an EU parent company are exempt from withholding tax, if among other conditions, the recipient holds 15% or more of the shares of the subsidiary for at least one year (the required ownership percentage will be reduced to 10%, effective from 2009). See Section B.
- (e) The 0% rate applies to interest derived by nonresidents on the white list (see Section B) from treasury bonds, bonds issued by banks and listed companies (if maturity is at least 18 months), nonbank current accounts and certain cash pooling arrangements. The 12.5% rate applies to interest derived by residents and nonresidents not on the white list from loans in general (including, in principle, cash pooling) and on treasury bonds and corporate bonds (if maturity is at least 18 months). In general, the 27% rate applies to interest paid on deposit certificates, bank accounts and corporate bonds (if maturity is less than 18 months). It also applies to loan interest paid to a recipient from a tax haven (a jurisdiction on the black-list). For resident individuals carrying on business activities in Italy and resident companies, the interest withholding taxes are advance payments of tax. For other resident individuals and nonresident individuals and companies, the interest withholding taxes are final taxes.
- (f) Effective from 1 January 2004, no withholding tax is imposed on interest and royalties paid between associated companies of different EU member states if certain conditions are met. For details, see Section B.

- (g) The withholding tax rate of 30% applies to royalties paid to nonresidents. However, in certain circumstances, the tax applies to 75% of the gross amount, resulting in an effective tax rate of 22.5%. These rates may be reduced under tax treaties.
- (h) Loss carryforwards are allowed only for corporate income tax purposes. Losses incurred in the first three tax years of an activity may be carried forward indefinitely. Antiabuse rules may limit loss carryforwards.

## B. Taxes on Corporate Income and Capital Gains

**Corporate Income Tax.** Resident companies are subject to corporate income tax (*imposta sul reddito delle società*, or IRES; this tax was formerly known as *imposta sul reddito delle persone giuridiche*, or IRPEG) on their worldwide income. A resident company is a company that has any of the following located in Italy for the majority of the tax year:

- Its registered office;
- Its administrative office; or
- Its principal activity.

Unless they are able to prove the contrary, foreign entities controlling an Italian company are deemed to be resident for tax purposes in Italy if either of the following conditions is satisfied:

- The foreign entity is directly or indirectly controlled by Italian resident entities or individuals; or
- The majority of members of the board of directors managing the foreign entity are resident in Italy.

Nonresident companies are subject to IRES on their Italian-source income only.

**Rate of Corporate Tax.** Under the 2008 Budget Law, the IRES rate is reduced from 33% to 27.5%.

**Local Income Tax.** Resident and nonresident companies are subject to a regional tax on productive activities (*imposta regionale sulle attività produttive*, or IRAP) on their Italian-source income.

For manufacturing companies, IRAP is imposed at a rate of 4.25% on the net value of production, which is calculated by subtracting the cost of production from the value of production. An 8.5% rate applies to public entities performing commercial activities. Under the 2008 Budget Law, the IRAP rate is reduced to 3.9%.

Special rules for the calculation of the tax base for IRAP purposes also apply to banking institutions, insurance companies, public entities and noncommercial entities. Special rates may also apply.

Each region may increase or decrease the rate of IRAP by a maximum of one percentage point. Companies generating income in more than one region are required in the IRAP tax return to allocate their tax base for IRAP purposes among the various regions and to pay the applicable tax to the local tax authorities. Under the 2008 Budget Law, the annual IRAP return must be filed with the regional tax administrations, separately from the annual IRES return, which continues to be filed with the central tax administration.

Certain deductions are not allowed for IRAP purposes, such as certain extraordinary costs, credit losses, labor costs (excluding certain compulsory social contributions), and interest expenses (except for banks, insurance companies and holding companies).

## Capital Gains

*Resident Companies and Nonresident Companies with a Permanent Establishment in Italy.* In general, capital gains derived by resident companies or nonresident companies with a permanent establishment in Italy are subject to IRES and IRAP. Gains derived from disposals of participations and extraordinary capital gains are excluded from the tax base for IRAP purposes. Extraordinary gains are gains not related to the core business of the company, such as those derived from transfers of going concerns.

Capital gains on assets that have been held for at least three years may be taxed, at the taxpayer's option, entirely in the year of sale or spread over a maximum period of five years.

Italian corporate taxpayers (that is, companies and branches) may benefit from an 84% participation exemption regime (that is, only 16% is taxable) for capital gains derived from disposals of Italian or foreign shareholdings that satisfy all of the following conditions:

- The shareholding is classified in the first financial statements closed during the holding period as a long-term financial investment.
- The Italian parent company holds the shareholding for an uninterrupted period of at least 18 months before the disposal.
- The subsidiary actually carries on a business activity (real estate companies can satisfy this requirement only under certain limited circumstances).
- The subsidiary is not resident in a tax haven (a jurisdiction on the black list). The 2008 Budget Law contains a measure that replaces the existing black list system with a white list contained in a ministerial decree to be issued after the enactment of the Budget Law. The primary criterion for inclusion on the white list is the effective exchange of information with the Italian tax authorities.

Beginning with the third financial year (three full book years) before the year of the disposal, the last two conditions described above must be satisfied uninterruptedly.

Under the 2008 Budget Law, the participation exemption percentage increases to 95% for capital gains derived in fiscal years beginning on or after 1 January 2008. However, the 84% exemption continues to apply to capital gains realized up to the amount of devaluations deducted before the 2004 fiscal year.

If the conditions described above are not satisfied, capital gains on disposals of shares are fully included in the calculation of the tax base for IRES purposes. Capital gains on investments that have been recorded in the last three financial statements as fixed assets may be taxed over a maximum period of five years. In addition, any capital losses derived from disposals of such shareholdings may be deducted.

In principle, capital losses on shares are deductible. However, capital losses on participations that would benefit from the 84% participation exemption are 100% nondeductible (and a 12-month holding period applies instead of an 18-month period). Losses from sales of participations not qualifying for the participation

exemption are deductible for tax purposes only up to an amount equal to the taxable portion of the dividends received on participations. This rule applies to sales of participations acquired during the preceding 36 months.

*Nonresident Companies without a Permanent Establishment in Italy.* If no treaty protection is available, capital gains derived from sales of shares in Italian companies and partnerships by nonresident companies are subject to tax in Italy. Only 40% of capital gains on shares qualifying as a “substantial participation” is included in taxable income for corporate income tax purposes and taxed at the standard rate of 33% (that is, a 13.2% effective tax rate). Because of the decrease of the IRES rate from 33% to 27.5% under the 2008 Budget Law, a ministerial decree will be issued to adjust the percentage of exemption for capital gains to the new corporate income tax burden.

A “substantial participation” in a company listed on a stock exchange requires more than 2% of the voting rights at ordinary shareholders’ meetings or 5% of the company’s capital. For an unlisted company, these percentages are increased to 20% and 25%, respectively.

Capital gains on “nonsubstantial participations” are subject to a substitute tax of 12.5%. However, certain exemptions may apply, such as for nonresident shareholders resident in white list jurisdictions.

**Administration.** Income tax returns must be filed by the end of the 7th month following the end of the company’s fiscal year. Companies must make advance payments of their corporate and local tax liability equal to a specified percentage of the tax paid for the preceding year.

*Tax Rulings.* Several tax ruling procedures are available in Italy.

Taxpayers may request ordinary tax rulings to clarify the application of tax measures to transactions if objective uncertainty exists regarding the tax law. The request for an ordinary tax ruling must include the identification data for the taxpayer, a description of the transaction and a list of applicable measures, circulars and court decisions.

Specific tax rulings are available with respect to a limited range of operations that could result in tax avoidance, including the following:

- Corporate reorganizations;
- Transactions subject to fictitious interposition legislation (legislation under which the tax authorities may attribute income to the beneficial owner);
- Deduction of advertisement and entertainment expenses;
- Exchanges of tax credits and excess taxes;
- Tax-haven transactions;
- International group companies; and
- Tax restrictions on nonoperating companies.

In the event of litigation, the burden of proof is on the party that did not comply with the opinion. In practice, specific rulings are not binding on the tax authorities but they shift the burden of proof to them.



An international ruling scheme specifically deals with transfer pricing and cross-border interest, dividends, and royalties. An international ruling is binding for the fiscal year in which the ruling is entered into and for the following two fiscal years, unless material changes in legal or economic circumstances arise.

**Dividends.** A participation exemption regime applies to dividends. Under this regime, dividends distributed by companies to Italian entities subject to IRES (companies and branches) are 95% exempt from corporate taxation regardless of the source (domestic or foreign) of such dividends.

Italian parent companies are taxed on 100% of the dividends received from a subsidiary resident in a black-list (tax haven) jurisdiction, unless it obtains a ruling to the contrary from the Italian tax authorities. In addition, Italian parent companies receiving dividends from an intermediate holding company resident in a jurisdiction not on the black list are fully taxable on the dividends to the extent that these dividends derive from indirect subsidiaries resident in black list jurisdictions.

Under the 2008 Budget Law, the above mentioned black list is replaced by a white list provided by a ministerial decree. The following are the significant aspects of the new regime:

- Dividends received from subsidiaries located in a foreign country would qualify for the 95% exemption only if the country of establishment of the payer is included in the white list contained in the ministerial decree; and
- Italian parent companies would be taxed on 100% of the dividends received from a direct subsidiary established in a country not included in the white list.

A 27% withholding tax is imposed on dividends paid from Italian companies to nonresident companies without a permanent establishment in Italy (double tax treaties may provide for lower rates). Nonresidents may obtain a refund of dividend withholding tax equal to the amount of foreign tax paid on the dividends, but the maximum refund is  $\frac{4}{9}$  of the withholding tax paid. Under the 2008 Budget Law, dividends paid by Italian companies to entities established in an EU member state or in a country that is part of the European Economic Area (EEA) and included in the white list is subject to a 1.375% withholding tax. This new withholding tax rate applies to dividends paid in fiscal years beginning on or after 1 January 2008.

Companies from EU member states that receive dividends from Italian companies may be exempted from the dividend withholding tax or obtain a refund of the tax paid if they hold at least 15% of the shares of the payer for at least one year. The one-year holding period requirement must be satisfied as of the date of the distribution. The 15% threshold will be reduced to 10%, effective from 1 January 2009.

For nonresident companies with permanent establishments in Italy, the treatment of dividends is based on the principle of "PE attraction." Under this principle, dividends are deemed to flow through the Italian PE for tax purposes (unless a treaty provides otherwise), and no withholding tax applies.

**Withholding Taxes on Interest and Royalties.** Under Italian domestic law, a 12.5% withholding tax is imposed on loan interest paid to nonresidents. The rate is increased to 27% for payments to residents of black list (tax-haven) jurisdictions. Lower rates may apply under double tax treaties. Under the 2008 Budget Law, the 27% rate applies to companies resident in countries not included in the white list.

A 30% withholding tax applies to royalties and certain fees paid to nonresidents. In certain circumstances, the tax applies to 75% of the gross amount, resulting in an effective tax rate of 22.5%. Lower rates may apply under double tax treaties.

As a result of the implementation of EU Directive 2003/49/EC, withholding tax on interest payments and qualifying royalties paid between “associated companies” of different EU member states is abolished, effective from 1 January 2004. A company is an “associated company” of a second company if any of the following circumstances exist:

- The first company has a direct minimum holding of 25% of the voting rights of the second company;
- The second company has a direct minimum holding of 25% of voting rights of the first company; or
- A third company has a direct minimum holding of 25% of voting rights of both the first company and the second company.

Under the EU directive, the shareholding must be held for an uninterrupted period of at least one year. If the one-year requirement is not satisfied as of the date of payment of the interest or royalties, the withholding agent must withhold taxes on interest or royalties. However, if the requirement is subsequently satisfied, the recipient of the payment may request a refund from the tax authorities.

To qualify for the withholding tax exemption, the following additional conditions must be satisfied:

- The recipient must be a company from another EU member state that is established as one of the legal forms listed in Annex B of the law;
- The income must be subject to tax in the recipient’s jurisdiction, without any exemption; and
- The recipient must be the beneficial owner of the payment.

Domestic withholding taxes on interest and royalties may be reduced or eliminated by tax treaties.

**Foreign Tax Relief.** A foreign tax credit may be claimed for foreign-source income. The amount of the foreign tax credit cannot exceed that part of the corporate income tax, computed at the standard rate, that is attributable to the foreign-source income. Accordingly, the foreign tax credit may be claimed up to the amount that results from prorating the total tax due by the proportion of foreign-source income over total income.

If income is received from more than one foreign country, the above limitation on the foreign tax credit is applied for each country (per-country limitation). Excess foreign tax credits may be carried forward or back for eight years.

For corporate groups that elect the worldwide tax consolidation (see Section C), an Italian parent company may consolidate profits and losses of its foreign subsidiaries joining the tax group and compute a single group tax liability. Such group tax liability may be offset by a direct foreign tax credit granted to the resident parent company with respect to taxes paid abroad by foreign subsidiaries that are members of the tax group.

### **C. Determination of Business Income**

**General.** To determine taxable income, profits disclosed in the financial statements are adjusted for exempt profits, nondeductible expenses, special deductions and losses brought forward. Exempt profits include interest on government bonds issued on or before 30 September 1986 and income subject to Italian withholding tax at source as a final tax. Interest on government bonds issued after 30 September 1986, however, is not exempt from tax.

The following general principles govern the deduction of expenses:

- Expenses are deductible if and to the extent to which they relate to activities or assets that produce revenue or other receipts that are included in income.
- Expenses are deductible in the fiscal year to which they relate (accrual basis rule). Exceptions are provided for specific items, such as compensation due to directors, which is deductible in the fiscal year in which it is paid.

Write-offs of the value of Italian and foreign shareholdings may not be deducted.

Companies may not deduct expenses incurred in transactions with enterprises resident in non-EU tax-haven countries. However, this limitation does not apply if it is established that either of the following conditions is satisfied:

- The foreign enterprise is effectively involved in an actual business activity in the country or territory in which it is located; or
- The relevant transactions had a real business purpose and actually took place.

The Ministry of Finance issued a decree dated 23 January 2002, which identifies the tax-haven countries. Under the 2008 Budget Law, the Ministry of Finance will issue a new decree providing a white list of countries that allow a satisfactory level of information exchange with the Italian tax authorities. Under a five-year grandfathering provision, countries that are not currently included in the applicable black list are considered to be on the white list.

#### **Thin Capitalization and Other Limitations on Interest Deductions.**

Two sets of limitations are imposed on the deductibility of interest expenses accrued on the following:

- Loans obtained from or guaranteed by qualified shareholders or their related parties (thin capitalization); and
- Loans obtained to finance the acquisition of shares qualifying for the participation exemption (pro rata rule).

*Thin Capitalization.* The thin-capitalization limitation applies to interest accrued on debts granted or guaranteed by a shareholder, or its related parties, that holds directly or indirectly a participation representing the majority of the voting rights or at least 25%

of the share capital of the company. Companies in which the qualified shareholder holds a controlling interest are considered the shareholder's "related parties."

The thin-capitalization restriction applies when the ratio between the yearly average of related-party debt and the company's net equity exceeds 4:1. Under the restriction, the deduction of interest on the debt exceeding the ratio is disallowed. The relevant debts include debts granted by direct or indirect shareholders or their controlled subsidiaries and third-party debts that are guaranteed by shareholders or their controlled subsidiaries.

To the extent that interest paid to related parties is disallowed because the debt-to-equity ratio exceeds 4:1, such interest is treated as a dividend distributed by the company to the related-party lender.

Banks and other financial companies (with the exception of insurance companies) are not subject to the thin-capitalization rules, except for companies that carry out exclusively or principally a holding activity. Accordingly, banks and financial companies may deduct without restriction interest accrued on debt granted or guaranteed by related parties. Companies, other than holding companies, that generate annual revenue of less than €7.5 million are not subject to the thin-capitalization rules.

*Pro Rata Rule.* The deductibility of interest may be restricted by the pro rata rule even if it is not restricted by the thin-capitalization rule. The pro rata rule applies to the portion of all interest payments (not only interest paid to related parties) that is not disallowed under the thin-capitalization rules. Under the pro rata rule, the company's net equity is compared to its investment in subsidiaries (Italian and foreign) eligible for the participation exemption regime. The net equity is subject to certain adjustments designed to account for unpaid capital and uncovered operating losses.

If the book value of the investment in subsidiaries eligible for the participation exemption regime exceeds the adjusted net equity, the tax deduction for interest on related and unrelated debts is reduced by an amount calculated by applying the ratio of this excess amount to the amount by which total assets exceed adjusted net equity increased by trade payables. For the purpose of such limitation, the holding period for determining whether a participation qualifies for the pro rata rule continues to be 12 months. Therefore, participations that have already been held for 12 months at the end of the fiscal year could reduce the company's ability to deduct interest expenses under the pro rata rule. The pro rata rule does not apply to subsidiaries that elect tax consolidation or consortium relief (see *Groups of Companies* below).

Under the draft 2008 Budget Bill, both the pro rata rule and the thin-capitalization rule would be repealed. Consequently, the deductibility of interest expenses would depend only on an Earnings Before Income Taxes, Depreciation and Amortization (EBITDA) test resembling the one that is effective in Germany from the 2008 fiscal year. Under this test, the excess of interest expenses over interest income would be nondeductible to the extent that this excess amount is greater than 30% of the accounting gross profit. Any nondeductible amounts arising in the 2008, 2009 and

2010 fiscal years would be carried forward for 10 years. The carryforward period would be five years for nondeductible amounts arising in the 2011 fiscal year and future fiscal years.

**Foreign-Exchange Losses.** Gains and losses resulting from the mark-to-market of foreign currency-denominated debts, credits and securities are not relevant. An exception is provided for those hedged against exchange risk if the hedging is correspondingly marked-to-market at the exchange rate at the end of the fiscal year.

**Nonoperating Companies.** Italian resident companies and permanent establishments of nonresident companies are deemed to be “nonoperating companies” if the total of their average non-extraordinary revenues (proceeds from the ordinary activities of a company as shown on its financial statements) and increases in inventory are less than the sum of the average of the following during the preceding three years:

- 2% of the book value of the company’s financial assets;
- 6% of the book value of the company’s real estate assets; and
- 15% of the book value of the company’s other long term assets.

If the company qualifies as a nonoperating company, its taxable income cannot be lower than the sum of the following items:

- 1.5% of the book value of the company’s financial assets for the year;
- 4.75% of the book value of the company’s real estate assets for the year; and
- 12% of the book value of the company’s other long-term assets for the year.

Nonoperating companies that are in a value-added tax (VAT) credit position may no longer take the following actions:

- Claim such VAT for a refund;
- Use the VAT to offset other tax payments due;
- Surrender the VAT to other group companies; or
- Carry forward the VAT.

Tax losses incurred by nonoperating companies may not be carried forward.

Companies can be exempted from the above mentioned regime, for both income tax and VAT purposes, if they prove to the tax authorities that they were not able to reach the minimum income requirements because of extraordinary circumstances (an advance ruling must be obtained for such a determination). Certain companies are specifically excluded from the nonoperating companies’ regime (for example, listed groups). The 2008 Budget Law provides additional exclusions, such as companies with 50 or more shareholders and companies with an amount of business income greater than the total asset value.

**Inventories.** Inventory is normally valued at the lower of cost or market value for both fiscal and accounting purposes. However, companies may select other methods of inventory valuation specifically provided in the law, such as first-in, first-out (FIFO), last-in, first-out (LIFO) or average cost.

**Provisions.** Italian tax law provides a limited number of provisions.

*Bad and Doubtful Debts.* A general provision of 0.5% of total trade receivables at the year-end may be made each year until the total doubtful debt provision reaches 5%. Bad debts actually incurred are deductible to the extent they are not covered by the accumulated reserve and only if they have become irrecoverable or if there are bankruptcy proceedings.

Banks may deduct on a straight-line basis over nine years the write-down of receivables that exceeds the 0.4% limitation described in the preceding paragraph.

*Redundancy and Retirement Payments.* Provisions for redundancy and retirement payments are deductible in amounts stated by civil law and relevant collective agreements.

**Depreciation and Amortization Allowances.** Depreciation at rates not exceeding those prescribed by the Ministry of Finance is calculated on the purchase price or cost of manufacture. Incidental costs, such as customs duties and transport and installation expenses, are included in the depreciable base. Depreciation is computed on the straight-line method. Rates for plant and machinery vary between 3% and 15%. The established rates may be increased if assets are more intensely used than they are normally. For the first three years of an asset's life, anticipated depreciation of up to two times the ordinary rate per year may be claimed.

Under the 2008 Budget Law, accelerated depreciation (increased depreciation as a result of more intense use of the asset and anticipated depreciation claimed during the first three years of an asset's life) is no longer allowed. Consequently, only a deduction equal to half the ordinary depreciation in the year of acquisition is allowed.

In general, buildings may be depreciated using a 3% annual rate. Land may not be depreciated. If a building has not been purchased separately from the underlying land, for tax purposes the gross value must be divided between the nondepreciable land component and the depreciable building component. The land component may not be less than 20% of the gross value (increased to 30% for industrial buildings). As a result, the effective depreciation rate for buildings is 2.4% (2.1% for industrial buildings).

Purchased goodwill may be amortized over a period of 18 years. Know-how, copyrights, and patents may be amortized over two fiscal years. The amortization period for trademarks is 18 years.

Research expenses and advertising expenses may be either entirely deducted in the year incurred or written off in equal installments in that year and in the four subsequent years, at the company's option.

Amortization allowances of other rights may be claimed with reference to the utilization period provided by the agreement.

**Relief for Losses.** For IRES purposes only, losses may be carried forward and deducted from income of the five subsequent tax periods. Stricter rules apply to loss carryforwards if ownership of the company is transferred and if the company changes its activities. Effective from 2006, certain limitations on tax loss carryforwards that applied to transfers of companies to third parties are extended to intragroup transfers.

Losses incurred in the first three years of an activity may be carried forward for an unlimited number of tax periods. Effective from 2006, the three-year time limit is no longer computed from the date of the beginning of the company's activities, but from the company's date of incorporation. In addition, to qualify for an unlimited loss carryforward, such losses must derive from a new activity; that is, companies within the same group may not have previously carried out the activity.

The company resulting from or surviving after a merger may carry forward unrelieved losses of the merged companies against its own profits for the unexpired portion of the loss carryforward periods. In general, tax losses carried forward may not exceed the lower of the net equity at the close of the last fiscal year or the net equity shown on the statement of net worth prepared for the merger of each company involved in the merger. This limitation is applied on a company-by-company basis. Contributions to capital made in the 24 months preceding the date of the net worth statement are disregarded. Special rules further limit the amount of the losses that can be carried forward. Additional measures combat abuses resulting from the use of losses with respect to mergers, demergers and the transparency regime (see *Consortium Relief* below).

**Groups of Companies.** Groups of companies may benefit from tax consolidation and consortium relief. These regimes allow the offsetting of profit and losses of members of a group of companies.

*Tax Consolidation.* Italian tax consolidation rules provide two separate consolidation systems, depending on the residence of the companies involved. A domestic consolidation regime is available for Italian resident companies only. A worldwide consolidation regime, with slightly different conditions, is available for multinationals.

To qualify for consolidation, more than 50% of the voting rights of each subsidiary must be owned, directly or indirectly, by the common Italian parent company.

For a domestic consolidation, the election is binding for three fiscal years. However, if the holding company loses control over a subsidiary, such subsidiary must be immediately excluded from the consolidation. The tax consolidation includes 100% of the subsidiaries' profits and losses, even if the subsidiary has other shareholders. The domestic consolidation may be limited to certain entities, leaving one or more otherwise eligible entities outside the group filing election. Tax losses realized before the election for tax consolidation can be used only by the company that incurred such losses.

Although, in general, intracorporate dividends are 95% exempt (that is, 5% of the dividends are taxable), dividends within the consolidated group are 100% exempt. Under the 2008 Budget Law, this measure is repealed and all intracorporate dividends, including dividends within a consolidated group are 95% exempt.

Under a domestic consolidation, transfers of assets (other than goods produced or traded by the company, shares, bonds, and other similar securities) between group members may be carried out as tax-neutral transactions if both the seller and the buyer elect the domestic consolidation regime. Under the 2008 Budget Law,

the transfer of assets within consolidated companies becomes a taxable transaction, unless qualifying for tax-free treatment under other specific rules provided by the Italian tax laws.

*Consortium Relief.* Italian parent corporations can elect consortium relief if they hold more than 10% but less than 50% of the voting rights in their Italian subsidiaries. Under this election, the subsidiaries are treated as look-through entities for Italian tax purposes and their profits and losses flow through to the parent company in proportion to the stake owned. These profits or losses can offset the shareholders' losses or profits in the fiscal year in which the transparent company's fiscal year ends. Tax losses realized by the shareholders before the exercise of the election for the consortium relief cannot be used to offset profits of transparent companies.

Dividends distributed by an eligible transparent company are not taken into account for tax purposes in the hands of the recipient shareholders. As a result, Italian corporate shareholders of a transparent company are not subject to corporate income tax on 5% of the dividends received.

The election does not change the tax treatment of dividends distributed out of reserves containing profits accrued before the exercise of the election. Another benefit from consortium relief is that an eligible transparent company does not pay corporate income tax.

The consortium relief election is binding for three fiscal years and requires the consent of all the shareholders.

The consortium relief election may be beneficial for joint ventures that are not eligible for tax consolidation because the control test is not met. In addition, the election is also available for non-resident companies that are not subject to Italian withholding tax on dividend payments (that is, EU corporate shareholders qualifying under the EU Parent-Subsidiary Directive). If both EU corporate shareholders qualifying under the EU Parent-Subsidiary Directive and Italian corporate shareholders hold an Italian subsidiary, the EU corporate shareholders would want to elect consortium relief to allow the Italian corporate shareholders to benefit from tax transparency.

*Group Value-Added Tax.* For groups of companies linked by more than a 50% direct shareholding, net value-added tax (VAT; see Section D) refundable to one group company with respect to its own transactions may be offset against VAT payable by another, and only the balance is required to be paid by, or refunded to, the group.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax, on goods, services and imports	
Standard rate	20%
Other rates	4%/10%
Municipal real property tax (ICI), imposed on property's cadastral value	0.4% to 0.7%



<b>Nature of Tax</b>	<b>Rate</b>
Transfer tax on disposals of shares	0.14%
Social security contributions (2007 rates); includes employee's liability, pension contributions (IVS) and other minor contributions	
Industry; payable on gross remuneration by employers with more than 50 employees	
Workers	41.57%
Office staff	39.35%
Executives	36.45%
Additional contribution payable to the Social Security Institute for Industrial Executives (PREVINDAI); based on gross remuneration capped at €150,000	8%
Additional contribution payable for industrial executives to other social insurance fund (FASI)	
Employer	quarterly €360/ annual €1,440
Employee	quarterly €183/ annual €732
Trade; payable on gross remuneration by employers with more than 200 employees	
Workers	39.37%
Office staff	39.37%
Executives	36.03%
(For workers with remuneration greater than €40,083, the above rates are increased by 1%.	
For workers not making social security contributions before 1 January 1996, the pension contributions [IVS] payable by employers and employees is calculated on gross salary capped at €87,187.)	
Contribution for industrial injuries or professional diseases; payable by employers; rate depends on the professional risk covered (income caps apply to executives)	0.5% to 1.3%

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The underlying principle of the foreign-exchange control system is that transactions with nonresidents are permitted unless expressly prohibited. However, payments by residents to foreign intermediaries must be channeled through authorized banks or professional intermediaries. In addition, transfers of money and securities exceeding €10,000 must be declared to the Italian Exchange Office. Inbound and outbound investments are virtually unrestricted.

**Transfer Pricing.** Italy imposes transfer-pricing rules on transactions between related resident and nonresident companies. Under these rules, intragroup transactions must be carried out at arm's length. The Italian transfer-pricing rules do not apply to domestic transactions. As a result, adjustments of the prices in these transactions are based on other antiabuse provisions.

**Controlled Foreign Companies.** Italian law provides for the following two categories of controlled foreign companies (CFCs):

- Controlled companies (under Article 167 of the Income Tax Code); and
- Associated companies (under Article 168 of the Income Tax Code).

*Controlled Companies.* If an Italian individual or company controls directly or indirectly a company established in a black list (tax haven) jurisdiction, the individual or company's share of the income of the CFC is attributed to the individual or company, regardless of distribution. The income of the CFC must be assessed using the Italian corporate income tax rules and is taxed at the average rate of the Italian shareholder, but no lower than 27%.

*Associated Companies.* If an Italian individual or company owns directly or indirectly 20% of a company established in a black list (tax haven) jurisdiction (10% if the company is listed), the individual or company's share of the income of the CFC is attributed to the individual or company, regardless of distribution. The income of the CFC is assessed as the higher of the following amounts:

- Earnings before tax on the basis of the accounts; or
- A minimum income determined by applying certain ratios (1% for financial assets, 4% for real estate and 15% for other assets) to the assets of the CFC.

**Antiavoidance Legislation.** Under Italian antiavoidance rules (Article 37-bis of Presidential Decree No. 600/1973), in principle, the tax authorities may consider a transaction that involves single or connected acts to be a tax-avoidance transaction if it meets all of the following requirements at the same time:

- The transaction involves one or more of the following operations:
  - Contributions to companies or transfers or use of going concerns;
  - Assignments of credits;
  - Assignments of excess tax credits;
  - Payments of interest and royalties that are exempt from withholding tax (see Section B) to EU companies that are directly or indirectly controlled by non-EU residents;
  - Transactions provided for in EU Directive No. 90/434/CEE (the Merger Directive);
  - Transactions, including appraisals, regarding participations, securities, certificates, currencies, precious metals, swaps, options, hedging instruments and other specified items; and
  - Transfers of assets carried out as tax-neutral transactions between companies electing the domestic group taxation regime (see Section C).
- The transaction was entered into without a valid business purpose.
- The transaction was entered into in order to get around the law.
- The transaction was entered into in order to achieve an undue income tax savings or tax refunds.

The tax authorities may disregard a tax-avoidance transaction for tax purposes. The antiavoidance rules may be applied only to income tax and to estate and gift tax under an express reference.

**Debt-to-Equity Rules.** For information regarding thin-capitalization rules and other restrictions on the deductibility of interest, see Section C.

**Mergers and Acquisitions.** The 2008 Budget Law provides a significant change to the rules for the fiscal treatment of values resulting from merger and acquisitions transactions. Under the law, companies undertaking mergers, demergers, and asset contributions in exchange for shares may step up the tax basis of the assets by paying an 18% step-up tax. The step-up election applies to mergers and transactions, effective from the 2008 fiscal year. However, for operations finalized by 31 December 2007, the realignment of the tax and accounting basis of assets recorded in the 2007 financial statements and tax return is allowed if the 18% tax is paid.

## F. Treaty Withholding Tax Rates

	Dividends (1) %	Interest %	Royalties %
Albania	10	0/5 (d)(e)(z)	5
Algeria	15	0/15 (d)(e)(z)	5/15 (o)
Argentina	15	0/20 (d)(e)(z)	10/18 (h)
Australia	15	0/10 (d)	10
Austria	15	0/10 (d)(e)(z)	0/10 (i)
Bangladesh	10/15 (a)	0/10/15 (d)(e)(y)	10
Belgium	15	0/15 (w)	5
Brazil	15	0/15 (d)	15/22.5 (k)
Bulgaria	10	0	5
Canada	15	0/15 (d)(e)(z)	0/10 (l)
China	10	0/10 (d)(tt)	7/10 (aa)
Côte d'Ivoire	15/18 (uu)	0/15 (d)	10
Cyprus	15 (ww)	10	0
Czechoslovakia (t)	15	0	0/5 (h)
Denmark	0/15 (a)	0/10 (ee)(mm)	0/5 (nn)
Ecuador	15	0/10 (d)(e)(z)	5
Egypt	20/27 (cc)	0/25 (d)(e)(z)	15
Estonia	5/15 (a)	0/10 (d)(vv)	5/10 (kk)
Ethiopia	10	0/10 (oo)	20
Finland	10/15 (a)	0/15 (d)(e)(z)	0/5 (o)
France	5/15 (a)(gg)	0/10 (d)(e)(z)(ee)	0/5 (o)
Georgia	5/10 (a)	0	0
Germany	10/15 (a)	0/10/12.5 (d)(e)(z)(ee)(ff)	0/5 (l)
Ghana	5/15 (a)	10	10
Greece	15	0/10 (d)(e)(z)	0/5 (m)
Hungary	10	0	0
India	15/25 (a)	0/15 (d)(e)	20
Indonesia	10/15 (a)	0/10 (d)(e)(z)	10/15 (x)
Ireland	15	10	0
Israel	10/15 (a)	10	0/10 (o)
Japan	10/15 (a)	10	10
Kazakhstan	5/15 (a)	0/10 (d)(e)(z)	0/10 (hh)
Korea	10/15 (a)	0/10 (d)(e)(vv)	10
Kuwait	5/27 (a)	0	10
Lithuania	5/15 (a)	10 (d)(e)(z)	5/10 (kk)
Luxembourg	15	0/10 (d)(e)(z)	10
Macedonia	5/15 (a)	10 (d)(e)(z)	0
Malaysia	10 (xx)	0/15 (d)	15
Malta	15	0/10 (d)(e)(z)	0/10 (m)
Mauritius	5/15 (a)	0/12.5/27 (dd)	15
Mexico	15	0/15 (d)(e)(z)	0/15 (l)
Morocco	10/15 (a)	0/10 (d)(e)(z)	5/10 (o)

	<b>Dividends (1)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Mozambique	15	0/10 (ll)	10
Netherlands	5/10/15 (c)	0/10 (d)(e)(z)	5
New Zealand	15	0/10 (d)(e)(z)	10
Norway	15	0/15 (d)(e)(z)	5
Oman	5/10 (pp)	0/5 (oo)	10
Pakistan	15/25 (a)	0/27 (d)(e)(z)	22.5 (k)
Philippines	15	0/10/15 (d)(e)(z)	22.5 (k)
Poland	10	0/10 (d)(e)(z)	10
Portugal	15	0/15 (d)(e)(z)	12
Romania	10	0/10 (d)(e)(z)	10
Russian Federation	5/10 (g)	10	0
Senegal	15	15 (ll)	15
Singapore	10	0/12.5 (d)(z)	15/20 (n)
South Africa	5/15 (a)	0/10 (d)(e)(z)	6
Spain	15	0/12 (d)(e)(z)	4/8 (o)
Sri Lanka	15	0/10 (d)(e)(z)	10/15 (q)
Sweden	10/15 (a)	0/15 (d)(e)(z)	5
Switzerland	15	12.5 (rr)	5
Syria	5/10 (a)	0/10 (qq)	18
Tanzania	10	15	15
Thailand	15/20 (a)	0/10 (d)(e)(j)	5/15 (h)
Trinidad and Tobago	10/20 (a)	10	0/5 (bb)
Tunisia	15	0/12 (d)(e)	5/12/16 (r)
Turkey	15	15	10
Uganda	15	0/15 (b)(z)	10
Ukraine	5/15 (a)	0/10 (ll)	7
USSR (u)	15	0/12.5/27 (ii)	–
United Arab Emirates	5/15 (a)	0	10
United Kingdom	5/15 (a)(gg)	0/10 (e)(ee)	8
United States	5/10/15 (c)	0/15 (d)	5/7/8/10 (s)
Uzbekistan	10	0/5 (ll)	5
Venezuela	10	0/10 (b)(z)	7/10 (p)
Vietnam	5/10/15 (f)	10 (d)(e)(z)	7.5/10 (jj)
Yugoslavia (v)	10	10	10
Zambia	5/15 (a)	0/10 (d)	10
Nontreaty countries	27 (ss)	12.5/27 (ss)	22.5

(1) Dividends paid by Italian companies to EU parent companies are exempt from withholding tax if the recipient company holds a participation of at least 15% (10% from 2009) in the distributing company for an uninterrupted period of at least one year.

(a) The lower rate applies to corporate shareholders satisfying the following qualifying tests: Bangladesh, Estonia, India, Kazakhstan and Lithuania: at least 10% of the capital; Denmark: at least 25% of the capital for 12 months before the date the dividend is distributed; Finland: more than 50% of the capital; France: more than 10% of the capital for 12 months; Georgia, Germany, Indonesia, Israel, Korea, Macedonia, Mauritius, Morocco, Pakistan, Syria, Trinidad and Tobago, United Arab Emirates and Zambia: at least 25% of the capital; Ghana: at least 10% of the capital; Japan: at least 25% of the shares with voting rights for six months; Kuwait: at least 75% of the capital; South Africa: at least 25% of the capital for 12 months ending on the date the dividend is declared; Sweden: at least 51% of the capital; Thailand: at least 25% of the shares with voting rights; Ukraine: at least 20% of the capital; and United Kingdom: at least 10% of the shares with voting rights for 12 months.

- (b) The 0% rate applies to interest paid to or by a government.
- (c) The 5% rate applies to corporations that beneficially own more than 50% of the voting rights of the shares for 12 months ending on the date the dividend is declared. The 10% rate requires 10% ownership. The 15% rate applies in all other cases.
- (d) Interest paid to a "government" or central bank is exempt. The term "government" refers to the central government and any other local authority entirely owned by the state that receives interest on behalf of the central authority.
- (e) Interest paid by a contracting state is exempt. Under the Philippines treaty, the loan must involve the issuance of bonds or financial instruments similar to bonds.
- (f) The 5% rate applies to dividends paid to corporations that beneficially own at least 70% of the capital of the payer. The 10% rate applies to dividends paid to corporations that beneficially own at least 25% but less than 70% of the capital of the payer. The 15% rate applies to other dividends.
- (g) The 5% rate applies if the recipient of the dividend is a corporation that beneficially owns more than 10% of the capital of the payer and if the value of the participation of the recipient is at least US\$100,000 or an equivalent amount in another currency. The 10% rate applies to other dividends.
- (h) The lower rate is for the use of or right to use literary, artistic and scientific copyrights.
- (i) The higher rate applies if the recipient has an investment exceeding 50% of the capital of the payer.
- (j) The 10% rate applies only if the payer is engaged in an industrial activity and the interest is paid to a financial institution (including an insurance company). The exemption also applies to bonds issued by a contracting state.
- (k) Because the tax rates provided by these treaties (Brazil, 25%; and Pakistan, 30%) are higher than the rate under domestic law, the domestic rate of 22.5% applies. For Brazil, the 22.5% rate applies to trademark royalties only.
- (l) The lower rate applies to royalties for literature, plays, and musical or artistic works. Under the Germany treaty, royalties for films and recordings for television qualify for the lower rate. Under the Canada treaty, such royalties do not qualify for the lower rate. Under the Mexico treaty, royalties for films and recordings for television and radio do not qualify for the lower rate.
- (m) The lower rate applies to royalties paid for literary, artistic or scientific works and for films and recordings for radio or television.
- (n) The lower rate applies to patents, trademarks, trade names or other intellectual property.
- (o) The lower rate applies to royalties from the use of copyrights on literary, artistic or scientific works (excluding cinema and television films).
- (p) The lower rate applies to royalties paid for the use of, or the right to use, copyrights for literary, artistic or scientific works, including cinematographic films and recordings for radio and television broadcasts.
- (q) The lower rate applies to royalties paid for literary and artistic works, including films and recordings for radio and television.
- (r) In the case of royalties for the use of trademarks, films and industrial, commercial or scientific equipment, the withholding is 16%; for the use of copyrights for artistic, literary and scientific works, the rate is 5%. In all other cases, the rate is 12%.
- (s) In the case of royalties for the use of literary, artistic and scientific works, the rate is 5%; for the use of tangible property, the rate is 7%; for the use of films and recordings for radio or television, the rate is 8%. In all other cases, the rate is 10%.
- (t) The Czechoslovakia treaty applies to the Czech and Slovak Republics.
- (u) In general, the USSR treaty is honored by the Commonwealth of Independent States (CIS), except for Kazakhstan, but CIS members have different positions on the treaty. Italy and Kazakhstan have entered into a tax treaty (see rates in table).
- (v) The treaty with the former Yugoslavia applies to Croatia, Slovenia and the Federal Republic of Yugoslavia. Italy has entered into a new tax treaty with Macedonia.
- (w) An exemption applies to the following:
  - Interest on loans that are not in the form of bearer securities if the interest is paid to the following: the other contracting state; its political or administrative subdivisions; or its local authorities; and
  - Interest paid to credit institutions of the other contracting state if the interest is paid on loans that are not in the form of bearer securities and if the loans are permitted under an agreement between the governments of the contracting states.

- (x) The 10% rate applies to royalties and commissions paid for the use of or right to use the following: industrial, commercial or scientific equipment; or information concerning industrial, business or scientific know-how. The 15% rate applies to other royalties.
- (y) The 10% rate applies to interest paid by banks and other financial entities (that is, insurance companies). The 15% rate applies to other interest.
- (z) Interest paid on loans made in accordance with an agreement between the governments of the contracting states is exempt. Under the Mexico treaty, the loan must have a term of at least three years.
- (aa) Payments for the use of industrial, commercial and scientific equipment are taxed on the basis of 70% of the gross payments. Consequently, the effective rate for such payments is 7%.
- (bb) The lower rate applies to royalties for literature, musical and artistic works.
- (cc) The 27% rate is the rate under Italian domestic law for dividends paid to nonresidents.
- (dd) These are the rates under Italian domestic law. Under the treaty, the rate is 0% if the interest is paid to a Mauritian public body or bank resident in Mauritius.
- (ee) Exemption is provided for interest paid in connection with the following:
- Credit sales of industrial, commercial or scientific equipment; and
  - Credit sales of goods delivered from one enterprise to another enterprise.
- (ff) The 12.5% rate applies to payments on profit-sharing loans and to silent partners. The 10% rate applies in other circumstances.
- (gg) A refund may be available for the underlying tax credit with respect to business profits attached to the dividends.
- (hh) If a resident of a contracting state receives payments for the use of, or the right to use, industrial, commercial or scientific equipment from sources in the other contracting state, the resident may elect to be taxed in the contracting state in which the royalties arise as if the property or right for which the royalties are paid is effectively connected with a permanent establishment or fixed base in that contracting state. If such election is made, no withholding tax is imposed on the payments.
- (ii) The treaty exempts the following types of interest:
- Interest on bank credits and loans; and
  - Interest on current accounts and deposits with banks or other credit institutions.
- The 12.5% and 27% rates are the withholding tax rates under Italian domestic law.
- (jj) The lower rate applies to fees paid for technical assistance services. The higher rate applies to royalties paid for the use of the intangibles.
- (kk) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
- (ll) The treaty provides the following exemptions:
- Interest paid by the government or its local authorities;
  - Interest paid to the government of the other contracting state or its local authorities or other entities and organizations (including credit institutions) wholly owned by the other contracting state or its local authorities; and
  - Interest paid to other entities and organizations (including credit institutions) if the interest is paid on loans permitted under an agreement between the governments of the contracting states.
- (mm) The treaty provides the following exemptions:
- Interest paid by the state of source, its political or administrative subdivisions or its local authorities; and
  - Interest paid on loans granted, guaranteed or secured by the government of the other contracting state, by its central bank or by other entities and organizations (including credit institutions) wholly owned by the other contracting state or under its control.
- (nn) The lower rate applies to royalties paid for the use of, or the right to use, copyrights for literary, artistic or scientific works, excluding cinematographic films and other audio and visual recordings.
- (oo) The treaty provides the following exemptions:
- Interest paid by the government or a local authority thereof;
  - Interest paid to the government, a local authority thereof or an agency or instrumentality (including a financial institution) wholly owned by the other contracting state or a local authority thereof; and
  - Interest paid to any other agency or instrumentality (including a financial institution) with respect to loans made under agreement entered into between the governments of the contracting states.

- (pp) The 5% rate applies to companies (other than partnerships) that hold directly at least 15% of the capital of the payer of the dividends. The 10% rate applies to other dividends.
- (qq) The treaty provides the following exemptions:
- Interest paid to a contracting state, a local authority thereof, or a corporation having a public status, including the central bank of that state;
  - Interest paid by a contracting state or local authority thereof, or any corporation having a public status;
  - Interest paid to a resident of a contracting state with respect to debt obligations guaranteed or insured by that contracting state or by another person acting on behalf of the contracting state;
  - Interest paid with respect to sales on credit of industrial, commercial or scientific equipment or of goods or services between enterprises; and
  - Interest paid on bank loans.
- (rr) Effective from 1 July 2005 a 0% rate may apply under the agreement between Switzerland and the EU. The rates shown in the table are the withholding tax rates under the Italy-Switzerland double tax treaty. Subject to fulfillment of the respective requirements, the taxpayers may apply either the Switzerland-EU agreement or the Italy-Switzerland double tax treaty.
- (ss) See Section A.
- (tt) The exemption applies to interest paid to a resident of the other contracting state with respect to debt claims indirectly financed by the government of that other contracting state, a local authority, the central bank thereof or a financial institution wholly owned by the government of the other contracting state.
- (uu) The 18% rate applies to dividends paid by a company established in Côte d'Ivoire that is exempt from income tax or not subject to the normal income tax rate.
- (vv) The lower rate applies to interest related to loans that are guaranteed by the government or a local authority. Under the Korea treaty, the guarantee must be evidenced by an agreement contained in an exchange of letters between the competent authorities of the contracting states.
- (ww) The 15% rate applies to dividends paid by a company established in Italy to a Cyprus resident beneficiary. Dividends paid by a company established in Cyprus to an Italian resident beneficiary are exempt from withholding tax in Cyprus.
- (xx) The 10% rate applies to dividends paid by an Italian company to a Malaysian resident. Dividends paid by a Malaysian company to an effective beneficiary resident in Italy are exempt from tax in Malaysia if the beneficiary is subject to tax on the dividends in Italy.

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## JAMAICA

(Country Code 1)

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### **A. At a Glance**

Corporate Income Tax Rate (%)	33 <sup>1</sup> / <sub>3</sub> (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	33 <sup>1</sup> / <sub>3</sub> (a)
Withholding Tax (%)	
Dividends	0/33 <sup>1</sup> / <sub>3</sub> (b)

Interest	33 $\frac{1}{3}$ (c)
Royalties	33 $\frac{1}{3}$ (d)
Management Fees	33 $\frac{1}{3}$ (d)
Branch Remittance Tax	33 $\frac{1}{3}$
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- Building societies are taxed at a rate of 30%. Life insurance companies are taxed at a rate of 15% on their investment income and at a rate of 3% on their premium income.
- The dividend withholding tax is a final tax imposed on payments to both residents and nonresidents. No withholding tax is imposed on dividends paid by companies listed on the Jamaica stock exchange. The 33 $\frac{1}{3}$ % rate applies to other dividends. This rate may be reduced under tax treaties.
- This rate applies to interest paid to nonresident companies. Special rules apply to interest paid by prescribed persons (as defined). The withholding tax rates may be reduced under tax treaties. The recipients of the payments include the payments in taxable income reported on their annual income tax returns, and they may credit the tax against their annual income tax.
- This is a final tax imposed on payments to both residents and nonresidents. The withholding tax rate may be reduced under tax treaties.
- See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies are resident in Jamaica if the control and management of their affairs are exercised in Jamaica. Nonresident companies operating a branch on the island are taxed on profits derived from their Jamaican operations.

**Rates of Tax.** The standard rate of tax on profits is 33 $\frac{1}{3}$ %. Building societies are taxed at a rate of 30%. Life insurance companies are taxed at a rate of 15% on their investment income and at a rate of 3% on their premium income.

The profit tax applicable to the gaming industry is calculated on net sales (gross sales less the payout to gamblers) at rates ranging from 5% to 29%, depending on the gaming activity.

Remittances overseas by branches of foreign companies are subject to branch remittance tax at a rate of 33 $\frac{1}{3}$ %.

Several tax incentive programs offer tax exemptions.

For periods generally ranging from 5 to 15 years, companies registered under the Export Industry Encouragement Act or Hotel Incentives Act and companies engaged in approved agricultural activities are relieved from tax on the particular income for which the incentive is granted. The period of relief is specified in the order granting the exemption.

Companies registered under the Jamaica Export Free Zones Act are exempt from tax on income derived from the manufacturing and international trading of products. This exemption does not have a time limit.

Under the Urban Renewal Act, which was introduced to promote the improvement of depressed areas, approved entities may obtain various types of tax relief for development carried out in areas designated by the Jamaican government as special development areas. The tax relief relates to income tax, stamp duty and transfer tax.



**Capital Gains.** No tax is imposed on capital gains. However, a transfer tax of 7.5% is imposed on transfers of certain Jamaican property, including land and securities (see Section D). Stamp duty may also apply.

Capital allowances are subject to recapture on the disposal of assets (see Section C).

**Administration.** The tax year is the calendar year. The Commissioner of Income Tax may allow companies with an accounting year-end other than 31 December to pay tax based on income earned in that accounting year.

Income tax returns must be filed and payments made by 15 March of the year following the tax year to which the income tax return relates. Quarterly advance payments of tax must be made.

Interest of 40% per year is levied on late tax payments, and a penalty of 50% per year may also be charged.

**Dividends.** In general, dividends are subject to withholding tax and the tax withheld must be paid to the Revenue Authorities. The recipient includes the gross dividend in taxable income but receives a credit for the tax withheld. If this dividend is further distributed to a resident shareholder, it is known as a franked dividend and does not attract any further tax because the initial payment of tax on the dividend is treated as discharging the liability of any subsequent recipient of the dividend. As a result, the recipient of a franked dividend does not include the dividend in taxable income. Withholding tax is not imposed on dividends paid by companies listed on the Jamaica stock exchange.

Dividends paid out of capital are not subject to income tax, but they are subject to a 7.5% transfer tax.

No special rules apply to dividends received from subsidiaries.

**Foreign Tax Relief.** For income derived from treaty countries, the tax rate is the treaty rate applicable to the direct investor. The regular Jamaican corporate tax rate of 33 $\frac{1}{3}$ % is applied to income derived from nontreaty countries.

## C. Determination of Trading Income

**General.** Taxable income is based on accounting income with appropriate adjustments. To be deductible, expenses must be incurred wholly and exclusively in earning income.

Nondeductible expenses include capital expenditures, incorporation expenses and interest accrued, but not paid. Charitable donations approved by the Minister of Finance are deductible, up to a maximum of 5% of taxable income.

For tax purposes, preference dividends paid are generally treated similarly to interest paid.

**Inventories.** The first-in, first-out (FIFO) method of valuing inventory is permitted.

The 2005 budget proposed that the last-in, first-out (LIFO) method of inventory valuation also be allowed, effective from 1 January 2006.

**Provisions.** To be deductible, bad debts must be specific. General provisions are not allowed.

**Tax Depreciation (Capital Allowances).** The capital allowances as of the time of writing are described below. However, the 2005 budget proposed changes to the capital allowances. For details, see *Proposed Changes to Capital Allowances* below.

*Initial Allowance.* An initial allowance of 20% of the cost of an asset is granted for certain types of assets, including office equipment, computers, plant and machinery, and industrial buildings, as defined in the Income Tax Act. An initial allowance of 12.5% is granted for trade vehicles, which include motor vehicles used primarily for the transport of goods or members of the public. Initial allowances are granted in the year of purchase and are deducted from the depreciable value of the asset.

*Investment Allowance.* A 20% investment allowance is granted instead of the initial allowance for buildings and plant and machinery used in basic industries, which include certain specified types of manufacturing and construction. Plant and machinery purchased in Jamaica must be new to qualify for the investment allowance. However, both new and used plant and machinery purchased overseas qualify for the allowance. A 40% investment allowance is granted for assets used in agriculture (plant and machinery used in irrigation and agricultural buildings) and for ships. The initial allowance is substituted for the investment allowance if the asset is disposed of within three years of its purchase. The investment allowance does not reduce the depreciable value of an asset.

*Annual Allowance.* Plant and machinery qualify for an annual allowance of 10% under the reducing-balance method or 11.25% under the straight-line method. A 12.5% annual allowance under the straight-line method is granted to motor vehicles. However, the maximum depreciable cost for vehicles that are not trade vehicles is J\$3,200. A 22.5% annual allowance under the straight-line method is granted for computers. Office equipment qualifies for an annual allowance of 10% under the reducing-balance method or 11.25% under the straight-line method. Commercial and industrial buildings generally qualify for annual allowances under the reducing-balance method at rates that range from 2.5% to 5%, depending on the type of structure. Nonresidential buildings may also be depreciated over a maximum period of 40 years. If additions are made to the original structure, the cost of the additions is grouped with the tax-depreciated value at that date and is written off equally over the number of years remaining in the original 40 years. Consequently, there is a revised calculation for the write-off for each addition.

*Special Capital Allowance.* A special capital allowance is granted for capital expenditure incurred in 1994 and subsequent years by qualifying enterprises on new machinery. Fifty percent of the capital expenditure is deducted in the tax year the expenditure is incurred, and 50% is deducted in the following year. The machinery must be calibrated in the metric system if applicable. Motor vehicles, furniture and fixtures do not qualify for this special capital allowance. Qualifying businesses include certain manufacturing and industrial activities. A formal application must be made for approval to claim the special capital allowance.

*Disposal of Depreciable Assets.* Initial and annual allowances are generally subject to recapture on the sale of an asset, to the extent the sales proceeds exceed the tax value after depreciation. The amount recaptured may not exceed the total of the initial and annual allowances granted. Any amounts recaptured are subject to tax at the regular corporate tax rate. If the proceeds are less than the tax-depreciated value, an additional allowance is granted.

*Proposed Changes to Capital Allowances.* The 2005 budget included a proposal to simplify the capital allowance regime, effective from 1 January 2006. Under the proposal, the asset groups for tax depreciation purposes would be reduced to five categories and the favorable capital allowances that were geared towards basic industries would be eliminated. However, at the time of writing, the relevant legislation implementing these measures had not yet been passed.

**Relief for Losses.** Losses incurred since the 1987 tax year can be carried forward indefinitely. No carryback is permitted.

The 2005 budget proposed that the loss carryforward period would be limited to five years, effective from 1 January 2006. However, at the time of writing, the legislation implementing this measure had not yet been passed.

**Groups of Companies.** The law does not contain any group loss relief or consolidated return provisions.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Customs User Fee; imposed on the value of all imports with a few exceptions	2%
Environmental levy; imposed on the Cost, Insurance and Freight (CIF) value of all imported goods with a few exceptions	0.5%
General Consumption Tax, on the value added to goods and services; certain items are exempt	
Standard rate	16.5%
Certain telephone services	20%
Tourism sector	8.25%
Exports, government supplies and services of diplomats and international agents	0%
Assets tax; on gross assets	J\$1,000 to J\$35,000
Property tax; on gross assets	
First J\$300,000 of assets	J\$600
Assets in excess of J\$300,000; rate on excess	0.5%
Transfer tax, on transfers of certain Jamaican property, including land and securities; transfers of property in estates valued at J\$100,000 and under are not subject to transfer tax (see Section B)	7.5%
Stamp duty	Various

Nature of Tax	Rate
Social security contributions	
National insurance scheme; imposed on annual earnings (income for self-employed individuals) up to J\$500,000; paid by	
Employer	2.5%
Employee	2.5%
Self-employed individual	5%
National Housing Trust; paid by	
Employer, on payroll	3%
Employee, on salary	2%
Self-employed individual, on income	3%
Human Employment and Resource Training program (H.E.A.R.T.), on total payroll if it exceeds J\$173,328 a year; paid by employer	3%
Education tax, on taxable salary; paid by	
Employer, on payroll	3%
Employee, on salary	2%
Self-employed individual, on net earnings	3%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Jamaica does not impose foreign-exchange controls.

**Debt-to-Equity Rules.** No debt-to-equity restrictions are imposed.

**Foreign-Controlled Companies.** Subsidiaries of nonresident corporations are subject to income tax on their profits at a rate of 33 $\frac{1}{3}$ %. Withholding tax at a rate of 33 $\frac{1}{3}$ % is imposed on dividends remitted, unless a treaty provides a different rate.

**Antiavoidance Legislation.** Several antiavoidance measures are in force. These measures apply to transactions between persons that were not made at arm's length, artificial transactions that would reduce the amount of tax payable by any person and other similar transactions.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends (i) %	Interest %	Royalties %	Management Fees %
Antigua and Barbuda (h)	0	15	15	15
Barbados (h)	0	15	15	15
Belize (h)	0	15	15	15
Canada	15/22.5 (a)	15	10	12.5
China	5	7.5	10	0
Denmark	10/15 (b)	12.5	10	10
Dominica (h)	0	15	15	15
France	10/15 (e)	10	10	10
Germany	10/15 (c)	10/12.5 (d)	10	33 $\frac{1}{3}$
Grenada (h)	0	15	15	15
Guyana (h)	0	15	15	15
Israel	15/22.5 (e)	15	10	33 $\frac{1}{3}$

	Dividends (i) %	Interest %	Royalties %	Management Fees %
Montserrat (h)	0	15	15	15
Norway	15	12.5	10	10
St. Kitts and Nevis (h)	0	15	15	15
St. Kitts and Nevis (h)	0	15	15	15
St. Lucia (h)	0	15	15	15
St. Vincent and the Grenadines (h)	0	15	15	15
Sweden	10/22.5 (f)	12.5	10	10
Switzerland	10/15 (e)	10	10	10
Trinidad and Tobago (h)	0	15	15	15
United Kingdom	15/22.5 (a)	12.5	10	12.5
United States	10/15 (e)	12.5	10	0 (g)
Nontreaty countries	0/33 $\frac{1}{3}$ (i)	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$

- (a) Higher rate applies if payment is made to a company owning 10% or more of the voting stock of the payer.
- (b) Lower rate applies if payment is made to a company owning 25% or more of the capital or voting stock of the payer.
- (c) Lower rate applies if payment is made to a company owning 25% or more of the shares of the payer.
- (d) Lower rate applies to interest received by a bank recognized as a banking institution under the laws of the state from which the payment is made.
- (e) Lower rate applies if payment is made to a company owning 10% or more of the voting stock of the payer.
- (f) Lower rate applies if payment is made to a company owning 25% or more of the voting stock of the payer.
- (g) Management fees are not subject to withholding tax, but they are included in business profits. Consequently, net management fees are subject to tax in Jamaica only if the recipient has a permanent establishment there.
- (h) These are the rates under the Caribbean Community and Common Market (CARICOM) tax treaty, which the listed country has ratified.
- (i) Under Jamaican domestic law, withholding tax is not imposed on dividends paid by companies listed on the Jamaican stock exchange. As a result, the treaty rates do not apply to such dividends.

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%) (b)	
Dividends	20 (c)
Interest	15/20 (d)
Royalties from Patents, Know-how, etc.	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1 (e)
Carryforward	7 (f)

- (a) Local income taxes (see Section D) are also imposed. The resulting effective corporate income tax rate is approximately 41% (42% if the head office is located in Tokyo).
- (b) Except for the withholding taxes on royalties and certain interest (see footnote [d] below), these withholding taxes are imposed on both residents and nonresidents. For nonresidents, these are final taxes, unless the income is effectively connected with a permanent establishment in Japan. Royalties paid to residents are not subject to withholding tax.
- (c) Dividends paid on listed shares during the period of 1 April 2003 through 31 March 2009 are generally subject to a 7% withholding tax (an additional local tax of 3% is imposed on resident individuals) if certain requirements are met.
- (d) Interest paid to residents on bonds, debentures or bank deposits is subject to a 20% withholding tax, which consists of a national tax of 15% and a local tax of 5%. Other interest paid to residents is not subject to a withholding tax. Interest paid to nonresidents on bonds, debentures or bank deposits is subject to a 15% withholding tax. Interest paid to nonresidents on national and local government bonds under the Book-Entry Transfer System is exempt from withholding tax if certain requirements are met.
- (e) The loss carryback is temporarily suspended (see Section C).
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Tax.** Japanese domestic companies are subject to tax on their worldwide income, but nonresident companies pay taxes only on Japanese-source income. A domestic corporation is a corporation that is incorporated or has its head office in Japan. Japan does not use the “central management and control” criteria for determining the residence of a company.

**Rates of Corporate Tax.** The basic rate of national corporation tax is 30%. For corporations capitalized at ¥100 million or less, a tax rate of 22% applies to the first ¥8 million of taxable income.

Local income taxes, which are local inhabitant tax and enterprise tax, are also imposed on corporate income (see Section D). The resulting effective corporate income tax rate for companies subject to the 30% rate is approximately 41% (42% if the head office is located in Tokyo). Under Business Scale Taxation (Gaikei Hyojun Kazei; see Section D), for certain corporations, the effective rate is reduced to approximately 40%.

**Capital Gains.** In general, for Japanese corporate tax purposes, capital gains are not taxed separately. Such gains are treated as ordinary income to which normal tax rates apply. Transferor corporations in qualified reorganizations may defer the recognition of capital gains and losses arising in such transactions. Mergers, corporate spinoffs, share exchanges and contributions in kind are considered qualified reorganizations if they satisfy certain conditions.

A special surplus tax is imposed on capital gains from the sale of land located in Japan. However, this tax is currently suspended for sales conducted through 31 December 2008. The tax is calculated by applying the following rates, which vary depending on the length of time the property was held, to the capital gains.

Number of Years Held		Rate %
Exceeding	Not Exceeding	
0	5	10
5	—	5

**Administration.** The tax year for a corporation is its fiscal year. A corporation must file a tax return within two months of the end of its fiscal year, paying the tax at that time. A one-month extension is normally available on application to the tax authorities. Except for newly established corporations, if the fiscal year is longer than six months, the corporation must file an interim return within two months of the end of the first six months and make an advance payment at the time of filing the interim return equal to either 50% of its prior year’s tax liability or 100% of its estimated tax liability for the first six months of the current year.

**Dividends Received/Paid.** Dividends received from another domestic corporation, net of any related interest expense incurred for acquisition of the shares, are generally excluded from gross income. However, if the recipient corporation owns less than 25% of the domestic corporation distributing the dividends, 50% of the net dividend income is includible in gross income. Dividends distributed from a domestic corporation are subject to a 20% withholding tax, unless a tax treaty modifies the rate.



**Foreign Tax Credit.** A Japanese company may be entitled to claim a foreign tax credit against both Japanese corporation tax and local inhabitant tax (see Section D). Creditable foreign income taxes for a Japanese company include foreign income taxes paid directly by a Japanese company and its foreign branches (direct tax credit) and foreign income taxes paid by a first- or second-tier foreign subsidiary (indirect tax credit). In addition, under tax treaties, a tax-sparing credit may be available to domestic companies with a branch or subsidiary in a developing country.

### C. Determination of Trading Income

**General.** The tax law prescribes which adjustments to accounting income are required in computing taxable income. Expenditures incurred in the conduct of the business, except as otherwise provided by the law, are allowed as deductions from gross income.

Remuneration paid to directors cannot be deducted as an expense unless it is fixed compensation, remuneration determined and reported in advance or performance-based remuneration. The deductibility of entertainment expenses incurred by a corporation is restricted according to the size (capitalization) of the corporation. Deductions of donations, except for those to national or local governments or similar organizations, are limited.

**Inventories.** A corporation may value inventory at cost under methods such as the following: actual cost; first-in, first-out (FIFO); last-in, first-out (LIFO); weighted average; moving average; straight average; most recent purchase; and retail. Alternatively, inventory may be valued at the lower of cost or market value. If a corporation fails to report the valuation method to the tax office, it is deemed to have adopted the most recent purchase price method.

**Depreciation.** The cost of tangible fixed assets, excluding land, may be recovered using statutory depreciation methods, such as straight-line or declining-balance. Depreciation rates are stipulated in the Japanese tax law, which provides a range of rates for each asset category based on the useful life. Depreciation for tax purposes may not exceed the amount of depreciation recorded for accounting purposes. Revised depreciation rates apply to assets acquired on or after 1 April 2007. In addition, statutory salvage value and limit of depreciation are abolished in conjunction with the introduction of the revised depreciation rates. The following are the ranges of the revised depreciation rates for the straight-line and declining-balance methods for selected asset categories.

Asset Category	Straight-Line		Declining-Balance	
	From	To	From	To
Buildings	0.143	0.020	0.357	0.050
Building improvements	0.334	0.056	0.833	0.139
Other structures	0.334	0.013	0.833	0.031
Motor vehicles	0.500	0.050	1.000	0.125
Machinery and equipment	0.500	0.040	1.000	0.100

In the year of acquisition of specified machinery or equipment, a corporation may take additional depreciation. A corporation has the option of taking such additional depreciation or claiming the investment tax credit (see *Investment Tax Credit* below).

Intangible assets, including goodwill, are amortized using the straight-line method over their useful lives. The useful life of goodwill is five years.

**Investment Tax Credit.** A specified medium-sized or small corporation that acquires or produces certain qualifying machinery or equipment (for use in its business within one year of acquisition) may receive a credit against its corporate tax liability. The credit generally equals 7% of the cost or 20% of the corporate tax, whichever is less, and acts as a substitute for additional depreciation (see *Depreciation* above).

For research and development (R&D), a corporation may claim two credits, which are generally equal to 5% of certain incremental R&D expenditures and to 8% to 10% of the total R&D expenditure in a year, subject to a limit of 20% of the corporate tax due for the year. If the credit amount exceeds 20% of the corporate tax for the year, the excess portion can be carried forward as a credit to the following year.

**Net Operating Losses.** Under the 2004 tax reform, net operating losses of certain corporations may now be carried forward for seven years. Under prior law, the tax-loss carryforward period was five years. The seven-year tax loss carryforward period applies retroactively to net operating losses incurred in tax years beginning on or after 1 April 2001. Under the tax law, net operating losses may be carried back one year. However, the loss carryback is suspended for tax years ending from 1 April 1992 through 31 March 2008.

**Groups of Companies.** The Consolidated Tax Return System (CTRS) applies to a domestic parent corporation and its 100% domestic subsidiaries. A consolidated group must elect the application of the CTRS, subject to the approval of the National Tax Agency (NTA). If a consolidated group wants to terminate its CTRS election, it must obtain the approval of the NTA.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Consumption tax, on a broad range of goods and services	5%
Enterprise tax	
Companies that are subject to Business Scale Taxation; Business Scale Taxation (Gaikei Hyojun Kazei) applies to companies with capital of more than ¥100 million; under Business Scale Taxation, a company is subject to tax on the basis of its added value, its capital amount and its taxable income	
Rates on added value	0.48% to 0.504%
Rates on capital amount	0.20% to 0.21%
Rates on taxable income	3.8% to 7.56%
Companies that are not subject to to Business Scale Taxation; rates applied to taxable income	5% to 10.08%

Nature of Tax	Rate
Local inhabitant tax, which consists of an income levy and a capital levy	
Income levy; computed as a percentage of national income tax; rate depends on the company's capitalization and amount of national income tax	17.3% to 20.7%
Capital levy; based on the company's capitalization and number of employees; annual assessments vary depending on the cities and prefectures in which the company's offices are located	¥70,000 to ¥5.2 million
Social insurance contributions, on monthly standard remuneration and bonuses	
Basic contribution, paid by	
Employer	13.078%
Employee	12.198%
Nursing insurance premium for employees who are age 40 or older, paid by	
Employer	0.615%
Employee	0.615%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Bank of Japan controls inbound and outbound investments and transfers of money. Effective from 1 April 1998, the reporting requirements were simplified.

**Transfer Pricing.** The transfer-pricing law stipulates that pricing between internationally affiliated entities should be determined at arm's length. Entities are considered to be internationally affiliated entities if a direct or indirect relationship involving 50% or more ownership or substantial control exists. The law provides that the burden of proof as to the reasonableness of the pricing is passed to the taxpayer, and if the taxpayer fails to provide proof or to disclose pertinent information to the tax authorities, taxable income is increased at the discretion of the tax authorities. The legislation specifies three transfer-pricing methods — uncontrolled price, resale price and cost-plus. However, the tax authorities may also allow the use of the profit-split method or the transactional net margin method if the three methods specified in the legislation cannot be used. It is possible to reach transfer-pricing agreements in advance with the tax authorities.

**Tax-Haven Legislation.** The Japanese tax law has tax-haven rules. If a Japanese domestic company (including individuals who have a special relationship with such Japanese domestic company) owns 5% or more of the issued shares of a tax-haven subsidiary of which more than 50% is owned directly or indirectly by Japanese domestic companies and Japanese resident individuals (including nonresident individuals who have a special relationship with such Japanese domestic companies or such Japanese resident individuals), the undistributed income of the subsidiary must be included in the Japanese parent company's taxable income in proportion to the equity held. A foreign subsidiary is considered a tax-haven subsidiary if its head office is located in a country that does not impose income tax or if the company is subject to tax at an effective rate of 25% or less (the effective rate is calculated on a company-

by-company basis). Losses of a foreign affiliate may not offset the taxable income of the Japanese parent company.

**Debt-to-Equity Rules.** Thin-capitalization rules limit the deduction for interest expense for companies with foreign related-party debt if the debt-to-equity ratio exceeds 3:1.

## F. Treaty Withholding Tax Rates

For treaty countries, the rates reflect the lower of the treaty rate and the rate under domestic tax laws on outbound payments.

	Dividends %	Interest %	Royalties %
Australia	15	10	10
Austria	10/20 (a)	10	10
Bangladesh	10/15 (a)	10 (c)	10
Belgium	10/15 (a)	10	10
Brazil	12.5	12.5 (c)	12.5/15/20 (f)
Bulgaria	10/15 (a)	10 (c)	10
Canada	5/10/15 (a)(r)	10 (c)	10
China	10	10 (c)	10
Czechoslovakia (n)	10/15 (a)	10 (c)	0/10 (i)
Denmark	10/15 (a)	10	10
Egypt	15	15/20 (q)	15
Finland	10/15 (a)	10	10
France	0/5/10 (u)	10 (c)	10
Germany	10/15 (a)	10 (c)	10
Hungary	10	10 (c)	0/10 (i)
India	10	10 (c)	10
Indonesia	10/15 (a)	10 (c)	10
Ireland	10/15 (a)	10	10
Israel	5/15 (a)	10 (c)	10
Italy	10/15 (a)	10	10
Korea	5/15 (a)	10 (c)	10
Luxembourg	5/15 (a)	10 (c)	10
Malaysia	5/15 (a)	10 (c)	10
Mexico	0/5/15 (o)	10/15 (c)(p)	10
Netherlands	5/15 (a)	10 (c)	10
New Zealand	15	15/20 (q)	20
Norway	5/15 (a)	10 (c)	10
Pakistan	15/20 (a)	0/15/20 (m)(q)	0
Philippines (v)	10/15 (l)	10 (c)	10 (g)
Poland	10	10 (c)	0/10 (i)
Romania	10	10 (c)	10/15 (i)
Singapore	5/15 (a)	10 (c)	10
South Africa	5/15 (a)	10 (c)	10
Spain	10/15 (a)	10	10
Sri Lanka	20	15/20 (c)(q)	0/10 (h)
Sweden	0/5/15 (d)	10	10
Switzerland	10/15 (a)	10 (e)	10
Thailand	15/20 (s)	10/20 (c)(j)	15
Turkey	10/15 (a)	10/15 (c)(j)	10
USSR (k)	15	10 (c)	0/10 (i)
United Kingdom (t)	0/5/10	10 (c)	0
United States	0/5/10 (b)	10 (c)	0
Vietnam	10	10 (c)	10
Zambia	0	10 (c)	10
Nontreaty countries	20	15/20 (q)	20

- (a) The treaty withholding rate is increased to 15% or 20% if the recipient is not a corporation owning at least 25% (Pakistan — 33<sup>1</sup>/<sub>3</sub>%; Austria — 50%) of the distributing corporation.
- (b) Dividends are exempt from withholding tax if the beneficial owner of the dividends owns directly, or indirectly through one or more residents of either contracting state, more than 50% of the voting shares of the company paying the dividends for a period of 12 months ending on the date on which entitlement to the dividends is determined and if certain other conditions are met. The 5% rate applies to dividends paid to a company owning directly or indirectly at least 10% of the voting shares of the payer. The 10% rate applies to other dividends.
- (c) Interest paid to a contracting state, subdivision or certain financial institutions is exempt.
- (d) Dividends are exempt from withholding tax if the beneficial owner of the dividends is a listed company and if certain other conditions are met. The withholding tax rate of 5% applies to dividends paid to a company owning at least 25% of the voting shares of the payer. The 15% rate applies to other dividends. However, the exemption and the 5% rate described above do not apply to dividends paid by Japanese special purpose companies or securities investment corporations or by Swedish companies similar to such companies that may be introduced in the future. The withholding tax rate of 15% applies to such dividends.
- (e) Interest paid to a Swiss resident pursuant to debt claims guaranteed or insured by Switzerland is exempt.
- (f) The withholding rate for trademark royalties is 20%; for motion picture films and videotapes, the rate is 15%. The 12.5% rate applies to other royalties.
- (g) The withholding rate for motion picture films is 15%.
- (h) The withholding rate for motion picture films is 0% and for patent royalties is 10%.
- (i) The withholding tax on cultural royalties is exempt (Romania — 10%) and on industrial royalties is 10% (Romania — 15%).
- (j) The rate is generally 15% (Thailand — 20%), except it is reduced to 10% for interest paid to banks.
- (k) The USSR treaty applies to Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
- (l) The withholding rate is increased to 15% if the recipient is not a corporation owning at least 10% of the distributing corporation.
- (m) Interest on debentures or loans is exempt.
- (n) The Czechoslovakia treaty applies to the Czech and Slovak Republics.
- (o) The 5% rate applies if the recipient of the dividends is a corporation owning at least 25% of the payer. The 0% rate applies if such corporation is a “specified parent company,” as defined in the treaty. The 15% rate applies to other dividends.
- (p) The general rate is 15%. The 10% rate applies to interest paid to banks or by listed corporations.
- (q) See footnote (d) to Section A.
- (r) The 5% rate applies to dividends paid to a company owning at least 25% of the voting shares of the payer. The 10% rate applies to dividends paid by a nonresident-owned investment corporation resident in Canada to a Japanese company owning at least 25% of the voting shares of the payer. The 15% rate applies to other dividends.
- (s) The 15% rate applies if the dividends are paid by a company engaged in an industrial undertaking to a company owning at least 25% of the payer of the dividends. The 20% rate applies to other dividends.
- (t) Dividends are exempt from withholding tax if the beneficial owner of dividends owns directly or indirectly at least 50% of the voting shares of the payer of the dividends for the six-month period ending on the date on which the entitlement to dividends is determined and if certain other conditions are met. The 5% rate applies to dividends paid to a company owning directly or indirectly at least 10% of the voting shares of the payer for the six-month period ending on the date on which the entitlement to dividends is determined. The 10% rate applies to other dividends.
- (u) The 0% rate applies if the beneficial owner of the dividends owns directly at least 15%, or owns at least 25% (regardless of whether ownership is direct or indirect), of the voting shares of the payer of the dividends for the six-month period ending on the date on which the entitlement to dividends is determined and if certain other conditions are met. The 5% rate applies to dividends paid to a company owning directly or indirectly at least 10% of the voting shares of the payer for the six-month period ending on the date on which the entitlement to dividends is determined. The 10% rate applies to other dividends.
- (v) These rates will be effective from 1 January 2008 if the legal procedures for the treaty revision are completed by the end of November 2007.

Japan has agreed in principle on the revision of double tax treaties with Australia and Pakistan. However, the agreements have not yet been signed. Japan is renegotiating its double tax treaty with the Netherlands.

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### A. At a Glance

Corporate Income Tax Rate (%)	20 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	20 (a)
Exempt Company Fee (Annual)	£600
Withholding Tax (%)	
Dividends	0 (b)
Interest (c)	
On Bank Deposits and Short-Term Debt	0 (d)
Other Interest	0 (e)
Royalties from Patents	0/20 (f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	2
Carryforward	Unlimited

- (a) Reduced rates apply to certain types of companies. An International Business Company (IBC, see Section B) may be taxed at rates ranging from 0.5% to 30%. Alternatively, an IBC may apply to have its international business profits assessed at a single rate of tax, which may not be less than 2%.
- (b) See Section B.
- (c) Jersey has enacted legislation, which took effect on 1 July 2005, implementing withholding tax and exchange-of-information measures similar to the measures included in the European Council Directive 2003/48/EC on the Taxation of Savings Income. For details, see Section B.
- (d) Debt is considered short-term if it cannot exceed 364 days.

- (e) A 20% rate applies to certain interest on long-term debt if the loan agreement was entered into before 1 January 2004 and if no election is made to pay the interest gross. This rate is unlikely to be applied except in rare cases.
- (f) The 0% rate applies to royalties paid by exempt companies and IBCs.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Except for exempt companies (see *Exempt Companies* below), all companies incorporated in Jersey and companies incorporated elsewhere whose central management and control are exercised in Jersey are resident for tax purposes. Resident companies are subject to tax on their worldwide profits excluding capital gains.

**Rates of Corporate Income Tax.** The standard rate of tax is 20%.

Captive insurance and reinsurance companies and International Business Companies (see *International Business Companies* below) may qualify for reduced tax rates.

Jersey is not a member of the European Union (EU). However, as a result of the EU Code of Conduct and in accordance with Jersey's policy of constructive engagement with the EU, Jersey will introduce a standard corporate income tax rate of 0% and a rate for regulated entities of 10% (the 0%/10% regime). The new rates will be effective from 2009.

**Exempt Companies.** An exempt company is the most common form used by offshore investors. To qualify as an exempt company, a company must be beneficially owned by nonresidents of Jersey and meet certain other requirements. An exempt company is not subject to corporate income tax on its profits derived from business conducted abroad. It may be registered in Jersey or elsewhere and managed and controlled in Jersey. Exempt companies must pay an annual exempt company fee of £600 by 31 March.

By concession, a foreign-registered (not incorporated in Jersey) "investment company" may avoid the exempt company fee if it files an application with the tax authorities. "Investment company" is not defined. However, it does not include a company carrying on a trade.

As part of the move to the 0%/10% regime, the law providing for exempt company status will be repealed, effective from 1 January 2009.

**International Business Companies.** An International Business Company (IBC) may be a Jersey company, a foreign company controlled in Jersey or a Jersey branch of a nonresident company.

A multinational located in a country with an extensive treaty network can establish a finance branch in Jersey with IBC status that is subject to a low tax rate.

A permanent establishment in Jersey can qualify as an IBC. As a result, companies engaged in international trading operations that have offices and personnel in Jersey can be subject to low IBC tax rates.

The following table provides the statutory tax rates for profits derived from international activities by an IBC.

<b>Profits from International Activities</b>			
<b>Exceeding</b>	<b>Not Exceeding</b>		<b>Tax Rate</b>
<b>£</b>	<b>£</b>		<b>%</b>
0	3,000,000		2
3,000,000	4,500,000		1.5
4,500,000	10,000,000		1
10,000,000	—		0.5

For other profits of an IBC, the statutory tax rate is 30%.

The term “international activities” is not defined in law. However, it is broadly interpreted to mean profits derived from transactions with foreign (non-Jersey) residents. In addition, Jersey-source bank interest is deemed to be derived from international activities if all of the other profits of an IBC are derived from international activities. An IBC may apply to have its international business profits assessed at a single rate of tax, which may not be less than 2%. IBCs must pay an annual minimum tax of £1,200 by 31 October.

A new company established on or after 1 January 2006 may not claim IBC status. Companies that had IBC status on 1 January 2006 were required to apply by 31 December 2005 for an extension of their IBC status to 2011. If they did not apply, their IBC status will be lost in 2009 when the 0%/10% regime is introduced (see *Rates of Corporate Income Tax* above).

**Capital Gains.** Jersey does not impose a tax on capital gains.

**Administration.** Corporate income tax returns must be filed within 30 days of their date of issue. In practice, financial statements are accepted instead of tax returns. Assessments are normally issued to taxpayers in the year following the income year (the Jersey fiscal year coincides with the calendar year), and tax is payable on the day following the issue of the assessment. No penalties are imposed for late filing of tax returns. A 10% surcharge is imposed if tax remains unpaid as of the deadline set by the tax authorities, which is usually the first Friday of December.

Under the current rules, the basis of assessment for trading is a prior accounts year basis. Under this basis, if a company’s accounting period ends on 30 June, the basis period for the 2006 year of assessment will be the accounting period ended on 30 June 2005. As part of the transition to the 0%/10% tax regime, the basis of assessment for trading will be changed to the profits arising in the current accounting period. The new basis will be effective from 1 January 2009. Consequently, the 2007 and 2008 years of assessment will be transitional years, and the basis of assessment will be an average of the 2007 and 2008 years of assessment. For a company with an accounting period ending on 30 June, the tax adjusted profits for the 2008 year of assessment will be the average of the adjusted profits for the years ending 30 June 2007 and 30 June 2008.

Although no statutory clearance mechanism exists, on specific request, the tax authorities promptly provide advance rulings on the Jersey tax treatment of transactions.

**Dividends.** Dividends paid by Jersey resident companies are deemed to be paid net of a 20% tax. A 20% withholding tax is imposed on dividends paid by collective-investment funds (exempt companies) to Jersey residents.



**European Union Savings Directive.** Jersey has enacted legislation, which took effect on 1 July 2005, implementing measures similar to the withholding tax and exchange-of-information measures contained in the European Council Directive 2003/48/EC on the Taxation of Savings Income. The directive applies to interest on certain debt-related distributions paid to individuals resident in the EU. The withholding tax rate is 15% for the first three years, 20% for the next three years and 35% thereafter. The withholding tax applies unless the person beneficially entitled to the interest payment specifically authorizes disclosure of the interest payment to the Jersey tax authorities who are required to exchange this information with the tax authorities in the country or residence of the person beneficially entitled to the interest payment. The legislation affects companies that fall within the definition of “paying agent.”

**Foreign Tax Relief.** Jersey has double tax treaties with the United Kingdom, Guernsey and France. The treaty with France is extremely limited and deals only with the exemption of air transport and shipping profits. The arrangements with the United Kingdom and Guernsey give credit for tax on all sources of income, except that the treaty with the United Kingdom specifically excludes dividends and debenture interest.

Although Jersey has a limited treaty network, multinationals with Jersey companies in their corporate structures may reduce their global tax burden by routing income to Jersey through companies in other jurisdictions that can collect and pass on such income with the imposition of little or no withholding tax.

Unilateral relief is granted for income not covered by a treaty, to the extent that foreign tax paid is allowed as a deduction in the computation of the amount assessable. Unilateral relief in the form of a tax credit may also be granted by concession if the following conditions are satisfied:

- The income in question is substantial;
- The income would not otherwise come to the island; and
- The income will be used to generate taxable profits, or it will help to overcome an obstacle to the restructuring or expansion of a commercial enterprise and accordingly result in the more efficient use of resources to the benefit of the island's economy.

### **C. Determination of Trading Income**

**General.** The amount assessable is based on the accounting profit, adjusted for tax purposes.

Expenses incurred wholly and exclusively for the purposes of a trade or the managing of investments are deductible.

**Inventories.** There are no statutory rules prescribing which methods of stock valuation are acceptable. Inventory is normally valued at the lower of cost or net realizable value.

**Provisions.** Only provisions relating to specific expenses are allowed as deductions.

**Tax Depreciation.** Capital allowances, normally at 25% of the declining balance, are given on capital expenditure incurred to acquire machinery or plant to be used wholly and exclusively for the purposes of the trade.

Depreciation is calculated on a pool of assets. A balancing charge is imposed if the proceeds from the sale of an asset (limited to the cost of the asset) exceed the depreciated value of the pool or if the business is terminated.

**Groups of Companies.** No special legislation applies to groups of companies in Jersey. However, by concession, the tax authorities informally allow losses to be offset within a trading group through the payment of management fees in the same accounting period.

**Relief for Losses.** Losses in any trade may be used to offset either other income for the year in which the losses were incurred or profits derived from the same trade in the preceding two years. Unused losses may be carried forward, without time limit, to offset income from the same trade for any subsequent year of assessment.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Social security contributions; on salaries of employees resident in Jersey; payable by (for 2007) Employer (maximum contribution for each employee of £210.73)	6.5
Employee (maximum contribution of £194.52)	6
(It is anticipated that the contribution rates and the ceilings will be increased, effective from 1 January 2008. However, information about such increases was not available at the time of writing.)	
Goods and Services Tax; on domestic supplies of goods and services; expected to be implemented, effective from 1 May 2008; an exception will apply to certain entities owned by nonresidents of Jersey or certain regulated entities on application	3

#### E. Miscellaneous Matters

**Antiavoidance Legislation.** The Comptroller may make assessments or additional assessments to counteract transactions if the primary purpose is the avoidance or reduction of income tax. In general, these provisions do not apply to Jersey exempt companies or to IBCs.

**Foreign-Exchange Controls.** Jersey does not apply any form of exchange controls, and capital can be freely repatriated.

**Related-Party Transactions.** No special legislation applies to related-party transactions.

**Debt-to-Equity Rules.** Jersey does not impose debt-to-equity requirements.

**Transfer Pricing.** Jersey's law does not include transfer-pricing rules.

**F. Treaty Withholding Tax Rates**

	<b>Dividends</b> %	<b>Interest (e)</b> %	<b>Royalties</b> %
Guernsey	0 (a)	0/20 (b)(c)	0/20 (b)(d)
United Kingdom	0 (a)	0/20 (b)(c)	0/20 (b)(d)
Nontreaty countries	0 (a)	0/20 (c)	0/20 (c)(d)

- (a) See Section B.
- (b) Withholding tax is not imposed on interest and royalties if the income in the hands of the recipient represents business profits.
- (c) The 20% rate applies to interest on long-term debt if the loan agreement was entered into before 1 January 2004 and if no election is made to pay the interest gross.
- (d) The 20% rate applies to patent royalties. Royalties paid by exempt companies and IBCs (see Section B) are exempt from withholding tax.
- (e) Jersey has enacted legislation, which took effect on 1 January 2005, implementing withholding tax and exchange-of-information measures similar to the measures contained in the European Council Directive 2003/48/EC on the Taxation of Savings Income. For details, see Section B.

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**A. At a Glance**

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	
On Shares	35 (b)
On Depreciable Assets	35 (a)
Branch Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends	0
Interest	5 (c)
Other Payments to Nonresidents	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) This is the maximum rate.
- (b) See Section B.
- (c) This withholding tax is imposed on interest paid by banks to depositors (excluding interest paid on local interbank deposits).

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** In general, income tax is levied on corporate entities and foreign branches with respect to taxable profit from all sources arising or deemed to arise in Jordan. Income is deemed to arise in Jordan if one of the following is located there:

- The place of performance of work; or
- The place of delivery of work.

**Rates of Corporate Tax.** Corporate income tax is levied at the following rates.

Sector	Rate (%)
Hospitals, hotels, industrial, mining, construction and transportation	15
Banks and financial institutions	35
Insurance, exchange (foreign-exchange dealers), intermediation, telecommunication, trade, services and other companies	25

**Capital Gains.** Banks and financial companies are subject to tax on 75% of their capital gains derived from sales of shares in the local market. For other companies, capital gains derived from sales of shares in the local market are exempt from tax, but a percentage of the cost is disallowed. This percentage is the ratio of exempt income to total income, but the acceptable cost may not exceed 50% of exempt income. Capital gains derived from sales of shares in foreign markets are subject to tax if they arise from Jordanian funds.

Capital gains on sales of depreciable assets are taxed at the normal corporate income tax rates. The amount of the gains on such assets equals the lower of the depreciation for the asset that has been deducted in prior years or the profit realized on the sale.

**Administration.** Tax returns for all corporate entities must be filed in Arabic within four months from the end of each fiscal year, together with the total amount of taxes due per the final tax declaration. If the tax return is not submitted within the statutory time limit, delay fines of 2% are levied for each month of delay. The Director General of the Income Tax Department may waive or reduce these fines.

A taxpayer who is found guilty of evading tax is liable to pay double the amount of tax evaded. In addition, the taxpayer may be liable for fines of not less than JD 100 to JD 500 or may be subject to imprisonment for a period ranging from one week to one year, depending on the circumstances.

The income tax law and regulations provide incentives to taxpayers who choose to make payments in advance. The following credits can be claimed:

- 6% for payments made in the first month after the fiscal year-end;
- 4% for payments made in the second month after the fiscal year-end; and
- 2% for payments made in the third month after the fiscal year-end.

**Dividends.** In general, dividends received are exempt from tax. However, for banks and financial institutions, 25% of dividend

income is included in taxable income, and for other companies, 25% of dividend income is included in taxable income if it does not exceed the total acceptable costs.

**Interest.** Interest paid by banks to depositors, except for interest on local interbank deposits, is subject to a 5% withholding tax. The withholding tax is considered to be a payment on account for companies and a final tax for individuals.

**Foreign Tax Relief.** Foreign tax relief is granted in accordance with tax treaties signed with other countries.

### C. Determination of Trading Income

**General.** All income earned in Jordan from trading or other sources, except for income exempted by the income tax law, is taxable in Jordan.

All business expenses incurred to generate income are allowable, with limitations on certain items, such as entertainment and donations. A certain percentage of entertainment expenses is deductible. Head office charges are limited to 5% of branch net taxable income.

**Provisions and Reserves.** Provisions and reserves are generally not deductible for tax purposes.

However, insurance companies may deduct reserves. In addition, banks, insurance companies and certain other companies may deduct doubtful debt provisions.

Companies, except for banks and insurance companies, may deduct provisions for doubtful debts that arose and became doubtful on or after 1 January 2002, subject to the following limitations on deductibility:

- 5% of the balance of debts due for more than one year but less than two years; and
- 10% of the balance of debts due for more than two years but not more than three years.

However, the deductible amount of a provision may not exceed in a year 1% of the outstanding debts relating to the taxable activity.

Banks may deduct a provision for bad and doubtful debts as calculated in accordance with the Central Bank of Jordan guidelines, subject to certain limitations.

Insurance companies may deduct provisions for doubtful debts, subject to the following limitations:

- 5% of the balance of the debts due for more than 180 days but not more than 1 year;
- 10% of the balance of the debts due for more than one year but not more than two years; and
- 20% of the balance of debts due for more than two years but not more than three years.

Insurance companies' reserves are deductible subject to certain conditions and limitations.

**Tax Depreciation.** Statutory maximum depreciation rates are set for various types of fixed assets. If the rates used for accounting purposes are greater than the prescribed rates, the excess is

disallowed. The tax law allows accelerated depreciation rates. A tax regulation provides for the following straight-line and accelerated depreciation rates.

Asset	Straight-Line (%)	Accelerated (%)
Industrial buildings	4	—*
Other buildings	2	—*
Office equipment	10	20
Motor vehicles	15	30
Plant and machinery	10 to 25	20 to 50*

\* No accelerated rate is provided for buildings. Machinery and equipment and other fixed assets that are imported on a temporary entry basis (this is equipment that the government allows foreign contractors to import on a temporary basis for the purpose of carrying out certain contractual work in Jordan) do not qualify for accelerated depreciation.

Used assets are depreciated at statutory rates established by the tax authorities, calculated on the purchase price.

**Relief for Losses.** Taxpayers are allowed to carry forward unabsorbed losses indefinitely to offset profits of subsequent periods. Losses may not be carried back.

**Groups of Companies.** There are no provisions for filing consolidated returns or for relieving losses within a group of companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
University tax, levied on public shareholding companies and foreign operating branches' net profit before taxation	1
Scientific research tax; imposed on the net profit of public shareholding companies	1
General sales tax (similar to value-added tax)	16
Social security contributions, on salaries and all benefits except overtime; paid by	
Employer	11
Employee	5.5
Vocational training tax; imposed on companies' distributable profit	1
Withholding tax on imports; imposed on the value of goods imported for resale; paid on account against the taxpayer's final tax liability	2

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Jordan does not impose any foreign-exchange controls.

**Debt-to-Equity Rules.** The only restrictions on debt-to-equity ratios are those stated in the articles and memorandum of a corporation.

#### F. Tax Treaties

Jordan has entered into double tax treaties with Algeria, Bahrain, Canada, Croatia, the Czech Republic, Egypt, France, India, Indonesia, Iraq, Korea, Kuwait, Lebanon, Libya, Malaysia, the Netherlands, Pakistan, Poland, Qatar, Romania, Sudan, Syria, Tunisia, Turkey, the United Kingdom and Yemen.

In addition, Jordan has entered into tax treaties, which primarily relate to transportation, with Austria, Belgium, Cyprus, Denmark, Italy, Pakistan, Spain and the United States.

Jordan is negotiating double treaties with Bulgaria, Iran, Italy, Malta, Morocco and Ukraine.

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*This chapter below reflects the law in Kazakhstan as of 1 January 2007. Changes to the Tax Code in Kazakhstan may be introduced once a year. At the time of writing, changes to the law in Kazakhstan were not expected to be adopted in 2007 and, accordingly, become effective on 1 January 2008. However, readers should obtain updated information before engaging in transactions.*

### A. At a Glance

Corporate Profits Tax Rate (%)	30
Capital Gains Tax Rate (%)	30
Permanent Representation Tax Rate (%)	30
Branch Profits Tax Rate (Additional Tax) (%)	15 (a)
Withholding Tax (%)	
Dividends	15 (b)
Interest	15
Royalties from Patents, Know-how, etc.	20
Permanent Representation Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (c)

(a) This tax is imposed on the taxable profits of permanent representations after deduction of the profits tax.

- (b) This withholding tax applies to dividends paid to nonresident legal entities. Dividends paid to resident legal entities are exempt from tax.
- (c) Subsurface users (see Section C) may carry forward tax losses for seven years.

## B. Taxes on Corporate Income and Gains

**Corporate Profits Tax.** Enterprises carrying out activities in Kazakhstan, including enterprises with foreign participation and foreign entities operating through a permanent representation, are subject to tax. The definition of “permanent representation” is similar to the definition of “permanent establishment” in the model treaty of the Organization for Economic Cooperation and Development, without the standard exemptions. Kazakhstan legal entities are subject to tax on their worldwide income. Foreign legal entities are subject to tax on profits from Kazakh sources that are earned through a permanent representation.

**Rates of Corporate Tax.** The regular corporate profits tax rate is 30%. This rate also applies to enterprises with foreign participation (joint ventures), companies with 100% foreign participation and permanent representations of foreign companies.

Permanent representations are also subject to a 15% tax on their profits after deduction of corporate profits tax. The 15% tax is imposed regardless of whether the profits are remitted to the home country of the permanent representation.

Payments to foreign legal entities abroad are subject to withholding tax. For dividends and interest, the rate is 15%. The rates are 10% for insurance premiums and 5% for reinsurance premiums. The rate for international transportation services is 5%. For all other payments, the rate is 20%.

*Taxation of Subsurface Users.* Businesses engaging in the exploration and extraction of mineral resources in Kazakhstan (usually referred to as subsurface users under Kazakhstan law) operate under subsurface use contracts, which are Model 1 contracts and Model 2 contracts.

Under a Model 1 contract (generally referred to as the excess profit tax [EPT] model), the subsurface user pays all taxes and required amounts that would generally apply to a taxpayer, such as corporate income tax, value-added tax and excise tax, as well as the following taxes and payments:

- Excess profit tax;
- Economic rent tax on crude oil for export;
- Bonuses (signature and commercial discovery bonuses); and
- Royalty.

Under a Model 2 contract (generally referred to as a production sharing agreement [PSA] model), the government of Kazakhstan grants a subsurface user the right to extract mineral resources at its own expense, with the subsequent reimbursement of any expenses incurred being made in the form of extracted production. Under the PSA model, the subsurface user pays (transfers) a share of production to the government of Kazakhstan and all other taxes and payments that apply to the EPT contracts, except for the following:

- Economic rent tax on crude oil and gas condensate for export;
- Royalty;



- Excess profit tax;
- Excise duties on crude oil and gas condensate;
- Land tax; and
- Property tax.

The share of the government of Kazakhstan equals the total value of profit production less the share of the subsurface user. The share of a subsurface user in profit production is determined by applying the lowest of the following three percentages:

- The R-factor (profitability indicator): ratio of the cumulative income of a subsurface user to cumulative project expenses;
- The internal rate of return (IRR) of a contractor: the rate of discounting by which real net present value reaches zero; and
- The P-factor (price coefficient): the ratio of the income of a subsurface user to the volume of extraction for the reporting period.

**Tax Incentives.** Currently, the following four special-economic zones are in existence in Kazakhstan: Astana – New City; Information Technology Park; Sea Port Aktau; and Ontustyk. The Kazakhstan Tax Code provides certain tax benefits for entities carrying out their activities in a special-economic zone. These tax benefits generally include a reduction of the corporate income tax payable by 100% and exemptions from land and property taxes. The tax benefits may be claimed by those entities that meet certain requirements established by the Tax Code.

The Tax Code also provides certain tax incentives for companies operating in the petrochemical industry, companies producing and selling goods with high added value and companies that sign investment contracts with the government.

**Capital Gains.** Capital gains are included in taxable profit and subject to tax at the regular corporate tax rates.

**Administration.** The tax year is the calendar year.

Legal entities must make advance payments of tax on or before the 20th day of each month. These payments are based on the estimated income and income tax due for the current year. Annual tax returns must be filed by 31 March of the year following the tax year. Profits tax due must be paid within 10 working days after the deadline for filing annual tax returns.

Excess payments of tax can be applied to certain other taxes or future tax liabilities, or refunded within 15 working days from the date on which a taxpayer submits a written application.

No refunds are granted for overpayments of value-added tax (VAT) unless a company's turnover is taxed at the 0% rate for VAT purposes.

In practice, it is difficult to obtain refunds of overpayments of tax.

**Dividends.** Dividends paid to nonresident legal entities are subject to a withholding tax of 15%. Dividends paid to resident legal entities are exempt from tax.

**Foreign Tax Relief.** A foreign tax credit is available for foreign tax paid on income earned abroad, unless such income is exempt from tax in Kazakhstan. The amount of the tax credited may not exceed

the amount of tax that would have been accrued on this income at the rates in effect in Kazakhstan.

### C. Determination of Taxable Income

**General.** Kazakhstan recently enacted a new accounting law. Under this law, certain entities, such as joint stock companies, must prepare their financial reporting in accordance with International Financial Reporting Standards (IFRS). Other entities may choose to prepare their financial reporting in accordance with IFRS. Entities that do not choose to follow IFRS must prepare their financial reporting in accordance with Kazakhstan Accounting Standards (KAS), which closely follow IFRS.

In general, taxable profit is determined in accordance with IFRS by computing the profit or loss from business activities and adding income from nontrading operations.

In general, under the Tax Code, all properly documented expenses related to the generation of revenues are deductible, unless the code indicates that a certain expense is explicitly nondeductible. In practice, the authorities often attempt to disallow business expenses as a result of their lack of understanding of the specifics of particular businesses.

Interest payable to residents is deductible in full. However, certain restrictions are imposed on the deductibility of interest payable to nonresidents, which are described below. The ratio of the amount of average annual equity to the amount of average annual liability should be multiplied by a maximum coefficient (seven for financial institutions and four for others), and the resulting figure should be multiplied by the actual amount of interest payable to a nonresident for the relevant year. The amount of interest payable to nonresidents in excess of the amount calculated under this formula is not deductible. For the purposes of the Tax Code, resident legal entities are legal entities created in compliance with Kazakhstan legislation, and legal entities with their place of effective management (actual management body) located in Kazakhstan.

Subsurface users (see Section B) may deduct in the form of depreciation deductions expenses incurred on geological studies, exploration and preparation work for the extraction of mineral resources, including expenses for assessment, expenses for equipping, general administrative expenses and expenses connected with the payment of bonuses. Subsurface user operations are works related to geological studies and to the exploration and production of natural resources. Enterprises begin to calculate depreciation when the extraction of mineral resources starts. They may set the annual depreciation rate at their discretion, but the rate may not exceed 25%.

**Provisions.** Banks may deduct provisions for doubtful and bad debts in an amount established by the National Bank of Kazakhstan and agreed to by the Ministry of Finance. Other entities may deduct bad debts that are three years past due.

**Tax Depreciation.** Buildings may be depreciated using an annual declining-balance rate of 10%. The maximum annual declining-balance depreciation rate for machinery and equipment (with the exception of machinery used in the oil and gas extraction

industry) is 25%. The maximum depreciation rate for office equipment and computers is 40%. Other fixed assets not included in the above categories are depreciated at a rate of 15%. The depreciation rates may be doubled in the tax year in which fixed assets are first placed into service in Kazakhstan if these fixed assets are used in the business for at least three years.

**Relief for Losses.** Enterprises may carry forward tax losses to offset annual taxable profits in the following three tax years. Sub-surface users (see *General* above) may carry forward tax losses for seven years. Loss carrybacks are not allowed.

**Groups of Companies.** The Tax Code does not include any measures permitting related enterprises to offset profits and losses among group members.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value added tax; imposed on supplies of goods, work and services that are considered to be supplied in Kazakhstan, as well as on imports of goods	
Standard rate (rate effective from 1 January 2008; the rate will be reduced to 12%, effective from 1 January 2009)	13
Many exports of goods	0
Export duties on certain types of goods (animal skins, scrap ferrous and non-ferrous metals and specified oil products); the duty is calculated as a specific percentage of the customs value, with a minimum duty of a specified amount of euros or U.S. dollars per unit of measurement	Various
Import duty on certain goods; the duty is calculated as a specific percentage of the customs value, with a minimum duty of a specified amount of euros per unit of measurement	
Percentage rates	0 to 100
Import excise taxes on certain goods; the tax is calculated as a specified amount of euros or tenge per unit or a specified percentage of the customs value	
Percentage rates	Various
Payroll taxes	
Social tax, paid by employer; imposed according to a regressive scale	
On the payroll for administrative and managerial, engineering and technical foreign specialists (rates effective from 1 January 2008)	13 to 5
On the payroll for foreign specialists, other than indicated above, and local employees (rates effective from 1 January 2008)	13 to 5

Nature of Tax	Rate (%)
Pension fund contributions; withheld from employees' salaries; the maximum base used to calculate the contributions is Tenge 731,400 (approximately US\$6,000) Standard rate	10
Social insurance contributions paid by employers and self-employed individuals; the base used to calculate the contributions may not exceed Tenge 97,520 (approximately US\$800) Percentage rate	3
Economic rent tax on crude oil and gas condensate for export Percentage rates	0 to 33

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The principal measures governing foreign-exchange controls in Kazakhstan are the Law on Currency Regulations and Currency Control (13 June 2005) and the resolutions of the National Bank of Kazakhstan. The foreign-exchange control system operates largely through the following two sets of rules:

- Rules for residents (that is, Kazakhstan citizens and Kazakhstan legal entities); and
- Rules for nonresidents (that is, foreign citizens, foreign companies, representative offices and branches of foreign legal entities).

In general, payments between residents may only be made in tenge.

Under the Civil Code, an obligation between two residents may not be denominated in foreign currency, with certain exceptions. This rule does not apply to contracts between residents and non-residents.

**Transfer Pricing.** Under the Law on Transfer Pricing, transfer-pricing rules apply to the following cross-border transactions:

- Transactions between mutually dependent or interrelated parties;
- Barter transactions;
- Transactions involving offset of counterclaims of a similar nature (including cession of claims);
- Transactions with persons registered (residing) or having bank accounts in foreign countries if the law in the relevant country does not require the disclosure and submission of information when conducting financial transactions or if a preferential tax regime, including an offshore zone regime, is applied;
- Transactions with legal entities that enjoy tax exemptions or apply a tax rate that differs from the rate established by the tax law; and
- Transactions with legal entities that have tax losses for the last two tax periods preceding the year of the transaction.

The last two items mentioned above also apply to onshore transactions that are connected with international business operations, which are defined as import or export transactions with respect to goods, works and services. Other cross-border transactions are subject to transfer-pricing rules if the transaction price is lower or

higher than the market price by more than 10%. In applying the transfer-pricing rules, the tax authorities monitor certain types of transactions. The list of such transactions is established by a special resolution. The government has also issued a list of companies registered for tax purposes in Kazakhstan that are subject to transfer-pricing monitoring. If the tax authorities are not able to determine the market price, they may use the cost-plus or resale-minus method.

Transfer-pricing measures contained in international agreements ratified by Kazakhstan prevail over the Law on Transfer Pricing. Related parties from double tax treaty jurisdictions are not subject to transfer-pricing control unless more than a 10% deviation from market prices exists.

A new draft transfer-pricing law is currently being discussed. At the time of writing, it was planned for parliament to vote on the new law by the end of 2007. Consequently, the new law may take effect as soon as 2008. The latest version of the draft law contains largely the same rules as the existing law and broadens the scope of the transfer-pricing measures.

## F. Treaty Withholding Tax Rates

The following table lists the withholding rates under Kazakhstan's tax treaties.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Austria	5/15 (b)	10	10
Azerbaijan	10	10	10
Belarus	15	10	15
Belgium	5/15 (b)	10	10
Bulgaria	10	10	10
Canada	5/15 (b)	10	10
China	10	10	10
Czech Republic	10	10	10
Estonia	5/15	10	15
France	5/15 (b)	10	10
Georgia	15	10	10
Germany	5/15 (a)	10	10
Hungary	5/15 (a)	10	10
India	10	10	10
Iran	5/15 (c)	10	10
Italy	5/15 (b)	10	10
Korea	5/15 (b)	10	10
Kyrgyzstan	10	10	10
Latvia	5/15 (a)	10	10
Lithuania	5/15 (a)	10	10
Moldova	10/15 (a)	10	10
Mongolia	10	10	10
Netherlands	0/5/15 (b)(d)	10	10
Norway	5/15 (b)	10	10
Pakistan	12.5/15 (b)	12.5	15
Poland	10/15 (c)	10	10
Romania	10	10	10
Russian Federation	10	10	10
Singapore (e)	5/10 (a)	10	10
Sweden	5/15 (b)	10	10
Switzerland	5/15	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Tajikistan	10/15	10	10
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	5/15 (a)	10	10
United Kingdom	5/15 (b)	10	10
United States	5/15 (b)	10	10
Uzbekistan	10	10	10
Nontreaty countries	15	15	20

- (a) The lower rate applies to dividends paid to companies owning at least 25% of the payer. The 15% rate applies to other dividends.
- (b) The lower rate applies to dividends paid to companies owning at least 10% of the payer. The 15% rate applies to other dividends.
- (c) The lower rate applies to dividends paid to companies owning at least 20% of the payer. The 15% rate applies to other dividends.
- (d) Under certain conditions, the rate is reduced to 0%.
- (e) This treaty is effective in Kazakhstan from 1 January 2008.

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### **A. At a Glance**

Corporate Income Tax Rate (%)	30
Turnover Tax Rate (%)	3 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	37.5
Withholding Tax (%)	
Dividends	10 (b)
Interest	15 (c)
Royalties	20 (d)
Insurance Commissions	20 (e)
Management and Professional Fees	20 (f)
Sports and Entertainment Fees	20 (g)

Telecommunication Service Fees	5 (g)
Rent	
Real Estate	30 (g)
Equipment	15 (h)
Agency, Consultancy or	
Contractual Fees	20 (i)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (j)

- (a) This tax, which is effective from 1 January 2007, applies to small taxpayers with annual gross turnover not exceeding KSH 5 million.
- (b) This rate applies to dividends paid to nonresidents. A 5% rate applies to dividends paid to residents.
- (c) This rate applies to payments to residents and nonresidents.
- (d) This rate applies to payments to nonresidents. A 5% withholding tax is imposed on royalties paid to residents.
- (e) This rate applies to payments to nonresidents. For insurance commissions paid to residents, a 5% withholding tax rate applies to payments to brokers and a 10% rate applies to payments to others. Commissions with respect to flower, fruit or vegetable auctions are exempt from withholding tax.
- (f) This rate applies to management and professional fees paid to nonresidents. A 5% rate applies to management and professional fees paid to residents.
- (g) This withholding tax applies only to payments to nonresidents.
- (h) This rate applies to rent paid to nonresidents under leases of machinery and equipment. A 3% rate applies to rent paid to residents under leases of machinery and equipment.
- (i) This rate applies to payments to nonresidents. However, payments to residents of other East African Community countries are subject to a reduced withholding tax rate of 15%. Withholding tax is imposed on residents at a rate of 5% on agency and consultancy fees, and at a rate of 3% on contractual fees.
- (j) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Kenya income tax is payable by companies and by unincorporated organizations and associations (excluding partnerships). Taxable trading income consists of income arising or deemed to arise in Kenya.

**Rates of Corporate Tax.** The corporate tax rate is 30% for resident companies and 37.5% for nonresident companies. The corporate tax rate for companies newly listed on a securities exchange approved under the Capital Markets Act is reduced to 20% for a five-year period beginning with the tax year following the year of the listing if the company's listed capital is at least 40% of its paid-up share capital.

**Turnover Tax.** Turnover tax, which is effective from 1 January 2007, is imposed on small taxpayers with annual gross turnover not exceeding KSH 5 million. The tax rate is 3% of annual gross turnover. The tax is a final tax.

**Administration.** A company's year of assessment (tax year) coincides with its financial accounting year. A change in a financial accounting year must be approved by the Commissioner of Income Tax.

A company must make payments, each equal to 25% of its estimated tax for the year, by the 20th day of the 4th, 6th, 9th and 12th months of its financial accounting year. The estimated tax must equal either 110% of the previous year's tax or 100% of the tax estimated to be due for the current year.

A company must file a self-assessment return within six months after the end of its financial year. It must also file financial statements within six months after the end of its financial year. Late filing of a return is subject to a penalty of 5% of the tax balance. The minimum penalty is KSH 10,000. The tax on the self-assessment, reduced by installment tax paid, is due within four months after a company's financial year-end. Late payments are subject to a penalty of 20% plus 2% per month (or part of a month) of the tax balance.

**Dividends.** Dividends paid by Kenya companies to resident companies are exempt if the recipient controls at least 12.5% of the distributing company's voting power. Taxable dividend income is subject to a final withholding tax of 10% for nonresidents and 5% for residents. Dividends received by financial institutions are exempt from tax.

Compensating tax at the regular corporate rate is levied on dividends paid out of untaxed profits.

**Foreign Tax Relief.** Relief for foreign taxes paid is granted in accordance with tax treaties with other countries. If foreign tax is paid to a country that does not have a tax treaty with Kenya, the tax paid is unilaterally treated as a tax-deductible expense in Kenya.

### C. Determination of Trading Income

**General.** Taxable income is accounting income adjusted for nontaxable income, such as dividends and capital gains, and for nondeductible expenses such as depreciation. Expenses are deductible if incurred wholly and exclusively in the production of income.

To encourage industrial growth and attract foreign investment, certain special deductions are allowed.

**Inventories.** The normal accounting basis of the lower of cost or net realizable value is generally accepted for tax purposes. In certain circumstances, obsolescence provisions may be challenged.

**Provisions.** Provisions included in computing financial accounting income are generally not deductible for tax purposes.

**Tax Depreciation.** Depreciation charged in the financial statements is not deductible for tax purposes. It is replaced by the following tax depreciation allowances.

Asset Class	Method	
	Declining-Balance (%)	Straight-Line (%)
Heavy machinery such as tractors and combines	37.5	—
Other vehicles such as automobiles, trucks and airplanes	25	—
All other machinery including ships	12.5	—
Specified office equipment such as computers	30	—
Other office equipment	12.5	—
Industrial buildings	—	2.5*
Hotels, hostels and educational buildings	—	10
Farming operations	—	50



\* The rate is applied to the capital cost, which is generally the lower of the construction cost or the purchase price, unless purchased from the business entity that constructed the building. Effective from 1 January 2008, rental residential buildings qualify as industrial buildings and are depreciable at an annual rate of 5%.

A 100% investment allowance is granted for capital expenditure on industrial buildings and hotels and on machinery installed on such structures. This investment allowance reduces the depreciable cost of an asset.

Capital allowances are subject to recapture on the sale of an asset to the extent the sales proceeds exceed the tax value after depreciation. Amounts recaptured are treated as ordinary income and subject to tax at the regular corporate income tax rate.

**Relief for Losses.** Profits and losses arising from specified sources — rental income, income from agriculture and similar activities, and other profits from business — are computed separately. If a company has a loss in any year from one of the specified sources, the loss is offset only against subsequent profits derived from the same specified source.

**Groups of Companies.** The income tax law does not permit consolidated returns combining the profits and losses of affiliated companies or the transfer of losses from loss companies to profitable members of the same group of companies.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on the supply of goods and services in Kenya and on imported goods and services	
General rate	16
Other rate	0
Contributions to the National Social Security Fund (NSSF); expatriates who are members of social security schemes in their home countries and those expected to be in Kenya for not more than three years are exempt; contributions are payable monthly by	
Employer (maximum contribution of KSH 200)	5
Employee (maximum contribution of KSH 200)	5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Central Bank of Kenya imposes certain foreign-exchange regulations.

**Transfer Pricing.** The Minister for Finance has issued transfer-pricing rules. The rules include measures regarding the following matters:

- Entities and transactions to which the rules apply;
- Methods that may be used to determine arm's length prices; and
- Records regarding transactions that must be maintained.

The methods for determining arm's length prices are consistent with those approved by the Organization for Economic Cooperation and Development.

**Debt-to-Equity Rules.** The deductibility of interest on loans and foreign-exchange losses is restricted for a foreign-controlled company with a debt-to-equity ratio exceeding 3:1. For purposes of the ratio, debt includes any form of indebtedness for which the company is incurring interest, a financial charge, a discount or a premium.

## F. Treaty Withholding Tax Rates

Payee Resident in	Dividends %	Interest %	Royalties/ Management and Professional Fees
			%
Canada	15	15	15
Denmark	20	20 (a)	20
Germany	15	15 (a)	15
India	15	15	20 (d)
Norway	15	20 (a)	20
Sweden	15	15	20
United Kingdom	15	15 (a)	15 (b)
Zambia	0 (c)	15	20
Nontreaty countries	10	15	20 (e)

- (a) Interest paid by the government and the Central Bank of Kenya is tax-exempt.  
 (b) The rate is 12.5% for management and professional fees.  
 (c) No Kenya tax is due if the dividend is subject to tax in Zambia.  
 (d) The rate is 17.5% for management and professional fees.  
 (e) The withholding tax rate is 15% for consultancy fees paid to residents of other East African Community countries.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)(b)
Capital Gains Tax Rate (%)	25 (a)(b)(c)
Branch Income Tax Rate (%)	25 (a)(b)
Branch Profits Tax Rate (Additional Tax) (%)	25 (b)(d)
Withholding Tax (%)	
Dividends	0 (e)
Interest	14 (e)
Royalties from Patents, Know-how, etc.	0 (e)
Net Operating Losses (Years)	
Carryback	1 (f)
Carryforward	5

(a) Maximum rate (see Section B).

(b) A resident surtax at a rate of 10% is also imposed (see Section D).

(c) Capital gains are included in ordinary taxable income for corporate tax purposes.

(d) This tax is imposed on income that is remitted or deemed to be remitted by a Korean branch of a foreign corporation. The branch profits tax may be payable if the foreign company is resident in a country with which Korea has entered into a tax treaty and if the treaty requires the imposition of a branch profits tax. For a list of these countries and the rates of the tax, see Section B. The branch profits tax is imposed in addition to the income tax imposed on branches.

(e) For payments to domestic corporations and foreign corporations with a place of business in Korea. For withholding rates applicable to payments to foreign corporations that do not have a place of business in Korea, see Section B.

(f) The loss carryback is available to small and medium-sized enterprises only.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Korean domestic corporations are taxed on their worldwide income, including income earned by their foreign branches. A domestic corporation is one that has its head office in Korea. Foreign corporations are taxed on Korean-source income only.

**Rates of Corporate Tax.** The rates for 2008 are indicated below.

*Domestic Corporations.* Taxable income of up to W 100 million is taxed at 13%. Taxable income exceeding W 100 million is generally taxed at 25%. A resident surtax equal to 10% of corporate tax is also imposed (see Section D).

*Foreign Corporations with a Domestic Business Operation.* The same tax rates as those for domestic corporations apply.

A Korean branch of a foreign corporation is also subject to a branch profits tax, which may be imposed if the foreign company is resident in a country with which Korea has entered into a tax treaty and if the treaty requires the imposition of a branch profits tax. Companies resident in the following countries are subject to the branch profits tax at the rates indicated, which include the resident surtax.

Country	Rate (%)
Australia	15
Brazil	15
Canada	5*
France	5
Indonesia	10
Kazakhstan	5
Morocco	5
Philippines	11

\* This is the rate under the amended tax treaty between Korea and Canada, which became effective on 1 January 2007.

*Foreign Corporations without a Domestic Business Operation.* A foreign corporation that does not have a domestic business place in Korea is subject to the following withholding tax rates on its Korean-source income (unless other rates apply under a tax treaty).

Type of Income	Rate
Leasing income from vessels, aircraft, heavy equipment and other assets, and business income	2%
Personal services income	20%
Interest, dividends, royalties and other income	25%
Gain from transfer of securities or shares	Lesser of 10% of the gross sales price and 25% of net gain

The resident surtax at a rate of 10% is imposed in addition to the above rates.

*Domestic Place of Business.* A foreign corporation that has any of the following fixed operations in Korea is deemed to have a domestic place of business:

- A branch, office or any other business office;
- A store or any other fixed sales place;
- A workshop, factory or warehouse;
- A construction site or place of installation or assembly, which exists for more than six months;
- A place where services are rendered through employees for more than six months during a consecutive 12-month period or a place where services are rendered recurrently or repeatedly through employees over a period of two years or more; or
- A mine, quarry or other location for natural resources exploitation.

A fixed place of business does not include the following:

- A purchasing office;
- A storage or custody area for property that cannot be sold; or
- An office involved in advertising, public relations, collecting and furnishing information, market survey, and other preparatory or auxiliary activities.

A foreign corporation that does not have a fixed place of business in Korea may be considered to have a domestic place of business if it operates a business through a person in Korea authorized to conclude contracts or perform similar activities on its behalf.

*Tax Incentives Limitation Law.* The Tax Incentives Limitation Law (TILL) grants tax incentives to foreign investors approved by the Ministry of Finance and Economy.

The TILL offers incentives to foreign companies that invest in high-technology businesses and in Foreign Investment Zones (FIZs). Beginning with their first profitable year, these companies are exempt from corporate income tax on a percentage of their income for five years and benefit from a 50% tax reduction on such income for the following two years. For companies that do not earn a profit in the first five years, the tax exemption begins in the sixth year. In addition, a new tax incentive was introduced in 2003 for foreign investors in Free Economic Zones (FEZs). For the investments made in FEZs, a tax exemption applies for the first three years and a 50% tax reduction applies for the following two years. The percentage of income qualifying for the above tax incentives corresponds to the percentage of shares owned by foreign investors in the company.

Dividends paid to foreign shareholders by foreign-owned companies that benefit from a tax exemption or tax reduction described in the preceding paragraph also qualify for the tax exemption or the same tax reduction.

Depending on the type of investment, exemptions or reductions may apply to other taxes, including acquisition tax, registration tax, property tax and customs duty.

Royalties received in accordance with contracts classified as high technology and accepted by the Ministry of Finance and Economy under the TILL are exempt from income tax for five years.

**Capital Gains.** Capital gains are included in ordinary taxable income for corporate tax purposes.

**Administration.** A corporation must file a tax return within three months after the end of its fiscal year. In general, tax due must be paid at the time of submitting the tax return. However, if tax liability exceeds W 10 million, tax may be paid in installments.

**Dividends.** A corporation must include dividends received in taxable income. However, dividends received by a domestic corporation from a domestic subsidiary may be deducted from the taxable income according to a formula provided in the measure entitled "Dividends Received Deduction."

**Foreign Tax Relief.** A tax credit is allowed for corporate tax paid to a foreign government. The relief cannot exceed the lesser of the tax paid abroad and the Korean tax amount equivalent to the ratio of the income from foreign sources to the total taxable income. If a company has places of business abroad in two or more countries, in determining the limit for the tax credit, the corporation may either calculate the limit for each country individually or calculate the limit for all the countries together. If the amount of the foreign tax credit is limited by this rule, the excess of the foreign tax paid over the limitation may be carried forward to the following

five tax years. Alternatively, the corporate tax paid to a foreign government may be claimed as a tax deduction (the deduction method).

### C. Determination of Trading Income

**General.** The tax law defines the specific adjustments that are required in computing taxable income. If not specified by law, the accrual basis is applied.

**Inventories.** A corporation must select and notify the tax office of its basis for the valuation of inventories on its first annual income tax return. It may select the cost method or the lower of cost or market value method. The cost method may be applied using any of the following methods: first-in, first-out (FIFO); last-in, first-out (LIFO); moving average; total average; individual costing (specific identification); or retail. If a corporation fails to notify the tax office, it must use FIFO.

#### Reserves

*Reserves for Employee Retirement Allowance.* Under the Korean Labor Standard Law, employees with one year or more of service are entitled to a retirement allowance equal to one month's pay for each year of service on termination of employment. Reserves for retirement allowances are permitted, up to 5% of the total amount of wages paid to employees who are eligible for payment of a retirement allowance. However, the accumulated amount of the reserves is limited to no more than 30% of the estimated retirement allowances payable to all employees assuming that they retire on the closing date of the business year.

A company may claim a tax deduction for the remainder of the estimated retirement allowances by funding the portion of the reserve in excess of the tax-deductible limit. The only funding method permitted under the tax law is the deposit of an amount equal to the excess portion in an interest-bearing account with an insurance company, defined benefit retirement pension plan or in a trust for retirement (Jongopwon Toejik Shintak).

*Bad Debt Reserve.* A corporation is allowed to set up a reserve for bad debts. The maximum amount of the reserve is the greater of 1% (2% for financial institutions) of receivables at the end of the accounting period or an amount determined by a historical bad debt ratio.

**Depreciation and Amortization.** In general, corporations may depreciate tangible fixed assets using the straight-line, declining-balance or unit-of-production (output) depreciation methods. However, buildings and structures must be depreciated using the straight-line method. Intangible assets must be amortized using the straight-line method. A corporation must select from among the depreciation methods and useful lives specified in the tax law and notify the tax office of its selections in its first annual income tax return. Otherwise, the depreciation method and useful life designated in the tax law for the respective class of asset are applied. The following are the statutory rates of depreciation under the declining-balance method and useful lives for certain types of assets.

Asset	Annual Depreciation Rate Under Declining- Balance Method (%)	Years of Useful Life
Commercial buildings	–	20 to 40
Industrial buildings	–	20 to 40
Office equipment	45.1	5
Motor vehicles	45.1	5
Plant and machinery	45.1 to 14	5 to 20

Companies may elect to increase or decrease the statutory useful lives of tangible fixed assets acquired between 1 July 2003 and 30 June 2004 by up to 50%.

**Relief for Losses.** Tax losses can be carried forward for five years. Small and medium-sized enterprises may carry back losses one year.

**Groups of Companies.** No form of consolidated income reporting for groups of companies applies in Korea.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Resident surtax, levied as a surtax on ordinary tax	10
Value-added tax Standard rate	10
Acquisition tax, including farming and fishing surtax, on land, buildings, ships, automobiles and heavy equipment Normal rate	2.2
Acquired for business purposes in a major city	6.6
Registration tax, including local education surtax Normal rate on registration of incorporation Registration of incorporation in a major city	0.48 1.44
Payroll taxes, including resident surtax, on salaries and wages; paid by employer	8.8 to 38.5

#### E. Transfer Pricing

Korea has transfer-pricing rules. The acceptable transfer-pricing methods include comparable uncontrolled price, resale price, cost-plus, the transactional net margin method (TNMM) and profit-split. It is possible to reach transfer-pricing agreements in advance with the tax authorities.

#### F. Treaty Withholding Tax Rates

	Dividends		Interest %	Royalties	
	A %	B %		C %	D %
Albania	5	10	10	10	10
Algeria	5	15	10	2	10
Australia	15	15	15	15	15
Austria	5	15	10	2	10
Bangladesh	10	15	10	10	10
Belarus	5	15	10	5	5



	Dividends		Interest	Royalties	
	A	B		C	D
	%	%	%	%	%
Belgium	15	15	10	10	10
Brazil	15	15	15 (c)	15	15 (d)
Bulgaria	5	10	10	5	5
Canada (j)	5	15	10	10	10
Chile	5	10	15 (f)	5	15
China	5	10	10	10	10
Croatia	5	10	5	0	0
Czech Republic	5	10	10	10	0
Denmark	15	15	15	10	15
Egypt	10	15	15 (e)	15	15
Fiji	10	15	10	10	10
Finland	10	15	10	10	10
France	10	15	10	10	10
Germany	5	15	10	2	10
Greece	5	15	8	10	10
Hungary	5	10	0	0	0
India	15	20	15	15	15
Indonesia	10	15	10	15	15
Ireland	10	15	0	0	0
Israel	5	15	10 (h)	2	5
Italy	10	15	10	10	10
Japan	5	15	10	10	10
Jordan	10	10	10	10	10
Kazakhstan	5	15	10	2	10
Kuwait	10	10	10	15	15
Laos	5	10	10	5	5
Luxembourg	10	15	10	10	15
Malaysia	10	15	15	10	15
Malta	5	15	10	—	—
Mexico	0	15	15 (k)	10	10
Mongolia	5	5	5	10	10
Morocco	5	10	10	10	5
Myanmar	10	10	10	10	15
Nepal	5/10	15	10	15	15
Netherlands	10	15	15 (c)	10	15
New Zealand	15	15	10	10	10
Norway	15	15	15	10	15
Oman	5	10	5	8	8
Pakistan	10	12.5	12.5	10	10
Papua New Guinea	15	15	10	10	10
Philippines (b)	11	16.5	16.5	16.5	16.5
Poland	5	10	10	10	10
Portugal	10	15	15	10	10
Romania	7	10	10	7	10
Russian Federation	5	10	—	5	5
Singapore	10	15	10	15	15
Slovak Republic	5	10	10	10	10 (i)
Slovenia	5	15	5	5	5
South Africa (b)	5.5	16.5	11	11	11
Spain	10	15	10	10	10
Sri Lanka	10	15	10	10	10
Sweden	10	15	15 (c)	10	15
Switzerland	10	15	10	10	10
Thailand	15	20	10	15	15
Tunisia	15	15	12	15	15

	Dividends		Interest	Royalties	
	A	B		C	D
	%	%	%	%	%
Turkey	15	20	15 (a)	10	10
Ukraine	5	15	5	5	5
United Kingdom	5	15	10	2	10
United States (b)	11	16.5	13.2	16.5	11
Uzbekistan	5	15	5	2	5
Venezuela (b)	5.5	11	11 (l)	5.5	11
Vietnam	10	10	10	5	15
Nontreaty countries (b)(g)	27.5	27.5	27.5	27.5	27.5

A Controlling parent.

B Other shareholders.

C Industrial royalties.

D Other royalties.

(a) Reduced to 10% if repayment period is over two years.

(b) Resident tax of 10% of the corporate income tax is included.

(c) Reduced to 10% if repayment period is over seven years.

(d) For royalties for trademarks, the rate is increased to 25%.

(e) Reduced to 10% if the repayment period is more than three years.

(f) Reduced to 10% for interest paid to banks.

(g) Applicable to the income of foreign corporations that do not have a place of business in Korea and to income that is not attributed to a place of business in Korea.

(h) Reduced to 7.5% for interest received from banks or financial institutions.

(i) Royalties for the right to use copyrights of literary, artistic or scientific works, including cinematographic films, and films or tapes for television or radio broadcasting, are exempt from withholding tax.

(j) These are the rates under the amended tax treaty with Canada, which became effective on 1 January 2007.

(k) Reduced to 5% for interest paid to banks.

(l) Reduced to 5.5% for interest received from banks or financial institutions.

## KUWAIT

(Country Code 965)

### KUWAIT

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*This chapter reflects measures in Law No. 2 of 2008, which was recently approved by the Kuwait government. The new law, which is effective for fiscal years beginning after 3 February 2008, contains several significant tax changes, including a reduction in the corporate tax rate from a maximum of 55% to a flat rate of 15%.*

## A. At a Glance

Corporate Income Tax Rate (%)	15/55 (a)
Capital Gains Tax Rate (%)	15/55 (a)
Branch Tax Rate (%)	15/55 (a)
Withholding Tax (%)	
Dividends	0
Interest	0 (b)
Royalties	0 (b)
Management Fees	0 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3/Unlimited (c)

- (a) Under Law No. 2 of 2008, for fiscal years beginning after 3 February 2008, the tax rate is a flat 15%. Before the approval of this new law, Amiri Decree No. 3 of 1955 had provided that the maximum rate of tax was 55%. The maximum rate under Law No. 23 of 1961 is 57%. For further details, see Section B.
- (b) This income is treated as ordinary business income and is normally assessed on a deemed profit ranging from 96.5% to 100%.
- (c) Losses may be carried forward for an unlimited number of years if presence is continuous in Kuwait, in the islands of Kubr, Qaru and Umm Al Maradim or in the offshore area of the partitioned neutral zone under the control and administration of Saudi Arabia. Under Law No. 2 of 2008, losses may be carried forward for a maximum period of three years if the entity has not ceased its operations in Kuwait.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Foreign “bodies corporate” are subject to tax in Kuwait if they carry on a trade or business in Kuwait, directly or through an “agent” (see below), in the islands of Kubr, Qaru, and Umm Al Maradim or in the offshore area of the partitioned neutral zone under the control and administration of Saudi Arabia. Kuwaiti-registered companies wholly owned by Kuwaitis and companies incorporated in Gulf Cooperation Council (GCC) countries that are wholly owned by GCC citizens are not subject to income tax. The members of the GCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

The term “body corporate” refers to an association that is formed and registered under the laws of any country or state and is recognized as having a legal existence entirely separate from that of its individual members. Partnerships fall within this definition.

Law No. 2 of 2008 includes a definition of an “agent.” Under this definition, an “agent” is a person authorized by the principal to carry out business, trade or any activities stipulated in Article 1 of the law or to enter into binding agreements with third parties on behalf and for the account of the person’s principal. A foreign principal carrying on business in Kuwait through an agent (as defined in the preceding sentence) is subject to tax in Kuwait.

Foreign companies carrying on a trade or business in Kuwait are subject to income tax under Amiri Decree No. 3 of 1955.

Foreign companies carrying on a trade or business in the islands of Kubr, Qaru and Umm Al Maradim are subject to tax in Kuwait under Law No. 23 of 1961.

Foreign companies carrying on a trade or business in the off-shore area of the partitioned neutral zone under the control and administration of Saudi Arabia are subject to tax in Kuwait on 50% of the taxable profit under Law No. 23 of 1961. In practice, the tax department computes the tax on the total income of the taxpayer and expects that 50% of such tax should be settled in Kuwait. Many taxpayers are currently contesting this practice. Amiri Decree No. 3 of 1955 and Law No. 23 of 1961 differ primarily with respect to tax rates.

Foreign companies can operate in Kuwait either through an agent or as a minority shareholder in a locally registered company. In principle, the method of calculating tax is the same for companies operating through an agent and for minority shareholders. For minority shareholders, tax is levied on the foreign company's share of the profits (whether or not distributed by the Kuwaiti company) plus any amounts receivable for interest, royalties, technical services and management fees.

**Tax Rates.** Under Law No. 2 of 2008, the tax rate is reduced to a flat rate of 15%, effective from fiscal years beginning after 3 February 2008. Before the approval of the new law, the following tax rates were applicable under Amiri Decree No. 3 of 1955.

Taxable Profits		Rate (%)
Exceeding (KD)	Not Exceeding (KD)	
0	5,250	0
5,250	18,750	5
18,750	37,500	10
37,500	56,250	15
56,250	75,000	20
75,000	112,500	25
112,500	150,000	30
150,000	225,000	35
225,000	300,000	40
300,000	375,000	45
375,000	—	55

The following are the tax rates under Law No. 23 of 1961.

Taxable Profits		Rate (%)
Exceeding (KD)	Not Exceeding (KD)	
0	500,000	20
500,000	—	57

Kuwaiti income tax is not progressive; consequently, total profit is taxed at the appropriate rate from the above table. If taxable profit is only marginally higher than the previous limit, tax is calculated by adding the actual excess to the amount payable on the previous limit. For example, on KD 38,000 of taxable income derived in Kuwait, the tax is KD 37,500 at 10% = KD 3,750, plus KD 500, resulting in total tax of KD 4,250.

**Investment Incentives.** Kuwait offers the investment incentives described below.

*Industry Law.* To encourage investments in local industrial undertakings, Industry Law No. 56 of 1996 offers the following incentives:

- Reduced import duties on equipment and raw materials;
- Protective tariffs against competing imported goods;
- Low-interest loans from local banks;
- Export assistance; and
- Preferential treatment on government supply contracts.

*Direct Foreign Capital Investment Law.* The Direct Foreign Capital Investment Law (DFCIL; Law No. 8 of 2001) provides the following benefits to new and existing foreign capital investment projects:

- Opportunity for investment in excess of 50% (up to 100%) in Kuwaiti companies by non-Kuwaitis.
- Full or partial exemption from customs duties on certain imports and other government charges for approved projects.
- A tax holiday of up to 10 years with respect to non-Kuwaiti shareholders' shares of the profits from qualifying projects. An additional tax holiday for a similar period is granted for further investment in an already approved project.
- A guarantee of repatriation of profits and capital invested in the project.
- Benefit of double tax treaties and investment promotion and protection agreements.
- Long-term leases of land in industrial estates at low rents.
- Employment of required foreign manpower without being subject to the restriction contained in Law No. 19 of 2000 concerning employment of Kuwaiti manpower.

The Ministry of Commerce and Industry has issued bylaws to the DFCIL. The bylaws explain the application of the law and the procedures for approval of projects, including procedures for obtaining applications for investment licenses and details about guarantees, advantages, facilities and exemptions to be offered to foreign investors. The Kuwait government has also issued a list of categories of projects that qualify for approval under the DFCIL.

*Kuwait Free Trade Zone.* To encourage exporting and re-exporting, the government has established the Kuwait Free Trade Zone (KFTZ) in the vicinity of the Shuwaikh port. The KFTZ offers the following benefits:

- Up to 100% foreign ownership is allowed and encouraged;
- All corporate and personal income is exempt from tax;
- All imports into and exports from the KFTZ are exempt from tax; and
- Capital and profits are freely transferable outside the KFTZ and are not subject to any foreign-exchange controls.

**Capital Gains.** Capital gains on the sale of assets and shares by a foreign shareholder are treated as normal business profits and are subject to tax at the rates stated above.

Profits earned by body corporates from trading in securities listed on the Kuwait Stock Exchange, directly or through mutual funds, are not taxable in Kuwait.

**Administration.** The calendar year is generally used for Kuwaiti tax purposes, but a taxpayer may request in writing for permission to prepare financial statements for a year ending on a date other than 31 December. For the first or last period of trading or carrying on a business, a taxpayer may be allowed to file a tax declaration covering up to 18 months.

Accounting records should be kept in Kuwait, and it is normal practice for the tax authorities to insist on inspecting the books of account (which may be in English) and supporting documentation before agreeing to the tax liability.

A tax declaration must be filed on or before the fifteenth day of the fourth month following the end of the taxable period (for example, 15 April in the case of a 31 December year-end). Tax is payable in four equal installments on the fifteenth day of the fourth, sixth, ninth and twelfth months following the end of the taxable period. An extension of up to 75 days for filing the tax declaration may be granted. If such an extension is granted, no tax payment is necessary until the tax declaration is filed, and payment must then be in one lump sum and not in installments. Tax is payable in Kuwaiti dinars with a certified check drawn on a bank in Kuwait.

In the event of a failure to file a tax declaration by the due date, a penalty is payable equal to 1% of the tax for each 30 days or fraction thereof during which the failure continues. In addition, in the event of a failure to pay tax by the due date, a penalty is payable equal to 1% of the tax payment for each period of 30 days or fraction thereof from the due date to the date of the settlement of the tax due.

Ministerial Order No. 16 of 1997, which was issued by the Ministry of Finance, provides for the filing of objections and appeals against tax assessments.

Under Ministerial Resolution No. 10, dated 28 March 2004, which was issued by the Ministry of Finance, on submission of a request by a taxpayer, the Assistant Undersecretary to the Ministry of Finance may reconsider the final assessment issued by the Department of Inspections and Tax Claims (DIT) if errors of fact exist. The DIT issues its decision based on the opinion received from the Undersecretary of the Ministry of Finance within 60 days of the date of submission of the request of the taxpayer.

Circular No. 2 of 2005, which was issued by the Ministry of Finance, allows the filing of an amended tax declaration if the assessment for the year has not been issued by the DIT. If the DIT accepts the amended tax declaration, the date of filing of the revised tax declaration is considered for the purpose of imposing delay fines.

Law No. 2 of 2008 has introduced a statute of limitation period of five years into the tax law. The prior Kuwait tax law did not provide a statute of limitations for tax. However, under Article No. 441 of the Kuwait Civil Law, any claims for taxes due to Kuwait or applications for tax refunds may not be made after the lapse of five years from the date on which the taxpayer is notified that tax or a refund is due.

**Dividends.** Dividends are not taxed. Tax is assessed on the share of profits attributable to the foreign shareholder according to the audited financial statements of a company, adjusted for tax purposes.

### **C. Determination of Trading Income**

**General.** Tax liabilities are generally computed on the basis of profits disclosed in audited financial statements, adjusted for tax

depreciation and any items disallowed by the tax inspector on review.

The tax declaration, supporting schedules and financial statements, all of which must be in Arabic, are to be certified by an accountant in practice in Kuwait who is registered with the Ministry of Commerce and Industry.

**Design Expenses.** The Kuwait Ministry of Finance has issued a new circular, which is effective from 29 May 2007. This circular supersedes Article 1 of Circular No. 37 of 2002, which provided the deemed profit percentages for revenue derived from engineering and design services. Under Circular No. 37, 75% to 80% of the related design revenue was allowed as costs.

Under the new circular, costs incurred for engineering and design services provided by third parties are now also restricted to the percentages provided in the circular.

The following are significant aspects of the new circular:

- If design work is carried out in the head office, 75% to 80% of the design revenue is allowed as costs.
- If design work is carried out by an associated company, 80% to 85% of the design revenue is allowed as costs.
- If design work is carried out by a third party, 85% to 90% of the design revenue is allowed as costs.
- If the design revenue is not specified in the contract, but design work needs to be executed outside Kuwait, the following formula may be used by the tax authorities to determine the revenue:

$$\text{Design revenue for the year} = \frac{\text{Design costs for the year} \times \text{annual contract revenue}}{\text{Total direct costs for the year}}$$

**Interest Paid to Banks.** Interest paid to local banks relating to amounts borrowed for operations (working capital) in Kuwait may normally be deducted. Interest paid to banks or financial institutions outside Kuwait is disallowed unless it is proven that the funds were specifically borrowed to finance the working capital needs of operations in Kuwait. In practice, it is difficult to claim deductions for interest expenses incurred outside Kuwait. Interest paid to the head office or agent is disallowed. Interest that is directly attributable to the acquisition, construction or production of an asset is capitalized as part of the cost of the asset if it is paid to a local bank.

**Leasing Expenses.** The Kuwait tax authorities may allow the deduction of rents paid under leases after inspection of the supporting documents. The deduction of rent for assets leased from related parties is restricted to the amount of depreciation charged on those assets, as specified in the Kuwait Income Tax Decree. The asset value for the purpose of determining depreciation is based upon the supplier's invoices and customs documents. If the asset value cannot be determined based on these items, the value is determined by reference to the amounts recorded in the books of the related party.

**Agency Commissions.** The tax deduction for commissions paid to a local agent is limited to 3% of revenue, net of any subcontractors' costs paid to the agent.

**Head Office Overhead.** The tax authorities allow the following deductions from income as a contribution toward expenses incurred by the head office of a foreign company:

- Contractors, consultants and others operating through an agent: 3.5% of revenue derived from the principal activities, reduced by reimbursed expenses and amounts paid or payable to subcontractors and providers of certain other services;
- Foreign companies participating with Kuwait companies in the execution of a contract: 2% of the foreign company's share of the contract revenue, reduced by amounts paid to subcontractors and reimbursed expenses;
- Minority shareholders in a share company: 2% of the shareholder's share of the company's revenue from the principal activities, net of payments to subcontractors and reimbursed expenses; and
- Insurance companies: 3.5% of net premiums.

Any direct expenses relating to operations in Kuwait that can be fully supported by documentation are allowed by the tax authorities in addition to the percentages stated above.

**Inventory.** Inventory is normally valued at the lower of cost or net realizable value, on a first-in, first-out (FIFO) or average basis.

**Provisions.** Provisions, as opposed to accruals, are not accepted for tax purposes.

**Tax Depreciation.** Tax depreciation is calculated using the straight-line method. The following are some of the permissible annual depreciation rates: buildings, 4%; most plant, 10%; computer equipment and software, 25%; motor vehicles, 25% to 33<sup>1</sup>/<sub>3</sub>%; and office furniture, 15%.

**Relief for Losses.** Losses may be carried forward and deducted from subsequent profits without limit, provided there is no cessation of activities; losses may not be carried back.

**Aggregation of Income.** If a foreign company has more than one activity in Kuwait, one tax declaration is required, aggregating the income from all activities.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Social security contributions; levied with respect to Kuwaiti employees only; payable monthly by employers and employees on monthly salary up to KD 2,250	
Employer	11
Employee	6
Contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS); contribution payable by Kuwait shareholding companies; contribution levied on profits after transfer to the statutory reserve and offset of loss carryforwards	1
National Labour Support Tax; imposed annually on the profits derived from activities in Kuwait by a Kuwaiti Company listed on the	



Nature of Tax	Rate (%)
Kuwait Stock Exchange; Ministerial Resolution No. 24 of 2006, which applies for accounting periods ending on or after 31 December 2006, provides rules for the application of the tax	2.5
<i>Zakat</i> ; imposed on annual net profits of public and closed Kuwaiti shareholding companies; effective from the financial year ended on 31 December 2007; Ministerial Order 58 of 2007 provides rules for the application of <i>zakat</i>	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** No foreign-exchange restrictions exist. Equity capital, loan capital, interest, dividends, branch profits, royalties, management and technical services fees, and personal savings are freely remittable.

**Transfer Pricing.** The Kuwaiti tax authorities deem the following profit margins for imported materials and equipment:

- Imports from head office: 10% to 15% of related revenue;
- Imports from related parties: 6.5% to 10% of related revenue; and
- Imports from third parties: 3.5% to 6.5% of related revenue.

The imputed profit described above is normally subtracted from the cost of materials and equipment claimed in the tax declaration. If the revenue from the materials and equipment supplied is identifiable, the Department of Income Taxes (DIT) normally reduces the cost of such items to show a profit on such materials and equipment in accordance with the percentages described above. If the related revenue from the materials and equipment supplied is not identifiable or not stated in the contract, the following formula may be applied to determine the related revenue:

$$\text{Material and equipment revenue for the year} = \frac{\text{Contract revenue for the year}}{\text{Total direct costs for the year}} \times \text{Material and equipment costs for the year}$$

**Supply and Installation Contracts.** In supply and installation contracts, a taxpayer is required to account to the tax authorities for the full amount received under the contract, including the offshore supply element, which is the part of the contract (cost, insurance and freight to the applicable port) pertaining to the supply of goods.

**Contractors' Revenue Recognition.** Tax is assessed on progress billings (excluding advances) for work performed during an accounting period, less the cost of work incurred. The authorities generally do not accept the completed contract or percentage-of-completion methods of accounting.

**Subcontractor's Costs.** The Kuwait tax authorities are normally stringent in allowing subcontractor's costs, particularly subcontractor's costs incurred outside Kuwait. Subcontractor's costs are normally allowed if the taxpayer provides the related supporting documentation (contract, invoices, settlement evidence and other documents), complies with Ministerial Order No. 44 of 1985 (see *Withholding of Final Payments* below) and fulfills certain other conditions.

**Withholding of Final Payments.** Under Ministerial Order No. 44 of 1985, all government departments and privately owned and government-owned companies are required to withhold final payments due to entities until such entities present a tax clearance from the Director of Income Taxes. In addition, the following rules must be followed:

- Local and foreign establishments, authorities and companies carrying on a trade or business in Kuwait are required to give the Director of Income Taxes details of the companies with which they are doing business as contractors, subcontractors or in any other form. Information to be provided should include the name and address of the company together with a photocopy of the contract.
- The final payment due to the contractor or subcontractor is to be withheld until the contractor or subcontractor presents a certificate from the Director of Income Taxes confirming that all tax liabilities have been settled. The final payment should not be less than 5% of the total contract value.
- When inspecting the tax declaration filed with the Director of Income Taxes, the Ministry of Finance will disallow all payments made to subcontractors if the rules described above are not observed.

Ministerial Resolution No. 8 of 2003, which was issued by the Minister of Finance on 7 June 2003, empowers the Ministry of Finance to demand payment of the 5% retained amount, referred to in the second bullet above, from the entities holding the amounts, if the concerned contractors or subcontractors fail to settle their taxes due in Kuwait.

**Work in Progress.** Costs incurred but not billed by an entity at the end of the fiscal year may be carried forward to the subsequent year as work in progress. Alternatively, revenue relating to the costs incurred but not billed may be estimated on a reasonable basis and reported for tax purposes if the estimated revenue is not less than the cost incurred. In general, if less than 20% of the contract is executed in a fiscal year, both income and expenses relating to the contract may be carried forward.

**Salaries Paid to Expatriates.** In a press release issued on 23 September 2003, The Ministry of Social Affairs announced that it would impose stiff penalties if companies fail to comply with the requirement to pay salaries to employees in their local bank accounts in Kuwait. These penalties are applicable from 1 October 2003. The release also stated that the DIT may disallow payroll costs if employees do not receive their salaries in their bank accounts in Kuwait.

**Offset Program.** The Ministry of Finance issued Ministerial Order 13 of 2005 to reactivate the offset program. The following are significant aspects of the program:

- All civil contracts with a value of KD 10 million or more and defense contracts with a value of KD 3 million or more attract the offset obligations for contractors. The obligations become effective on the signing date of the contract.
- Contractors subject to the offset obligation must invest 35% of the value of the contract with Kuwaiti government bodies.

- Contractors subject to the offset obligation may take any of the following actions to fulfill their offset obligation:
  - Implement investment projects suggested by the Offset Program Management.
  - Propose their own investment projects and then seek the approval of the Offset Program Management for such projects.
  - Participate in any of the funds established by the Offset Program Management.
  - Purchase commodities and services of Kuwaiti origin. The Ministry of Finance has not yet finalized the regulations regarding this item.
- Contractors covered by the offset obligation must provide unconditional, irrevocable bank guarantees issued by Kuwaiti banks to the Ministry of Finance equal to 6% of the contract price. The value of the bank guarantee is gradually reduced based on the actual execution by the foreign contractor or supplier of its work. The Ministry of Finance may cash in the bank guarantee if the company subject to the offset obligation fails to fulfill such obligation.

In practice, the offset program is likely to be implemented through the inclusion of clauses in supply contracts that refer to an offset obligation of the foreign contractor.

Unlike other offset programs in the Arabian Gulf, the Kuwaiti program allows foreign contractors to fulfill their offset obligations by investing in projects outside of Kuwait if these investments add value to Kuwaiti products. For example, a joint venture between Kuwaitis and foreigners to refine Kuwaiti crude oil may qualify as an offset obligation. Most investments that benefit the Kuwaiti economy may qualify under the program.

## **F. Treaty Withholding Tax Rates**

Kuwait has entered into tax treaties with several countries for the avoidance of double taxation. Treaties with several other countries are at various stages of negotiation or ratification.

However, little experience has been gained in Kuwait regarding the application of tax treaties. As a result, disputes about the interpretation of various clauses of tax treaties between taxpayers and the DIT are not uncommon. Disputes with the DIT regarding tax treaties normally arise with respect to the following issues:

- Existence of a permanent establishment;
- Income attributable to a permanent establishment; and
- Tax deductibility of costs incurred outside Kuwait.

Kuwait has also entered into treaties with several countries relating solely to international air and/or sea transport. Kuwait is also a signatory to the Arab Tax Treaty and the GCC Joint Agreement, both of which provide for the avoidance of double taxation in most areas. The other signatories to the Arab Tax Treaty are Egypt, Iraq, Jordan, Sudan, Syria and Yemen.

The domestic tax law in Kuwait does not provide for withholding taxes. As a result, it is not yet known how the Kuwaiti government will apply the withholding tax procedures included in the treaties listed in the table below. The withholding rates listed in the table are for illustrative purposes only.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Austria	0	0	10
Belarus	5 (c)	5 (c)	10
Belgium	10	0	10
Bulgaria	5 (j)	5 (f)	10
Canada	5/15 (m)	10	10
China	5 (a)	5 (a)	10
Croatia	0	0	10
Cyprus	10	10 (b)	5
Czech Republic	5 (j)	0	10
Ethiopia	5 (c)	5 (b)	30
France	0	0	0
Germany	5/15 (e)	0	10
Hungary	0	0	10
Indonesia	10 (c)	5 (b)	20
Italy	5	0	10
Jordan	5 (c)	5 (b)	30
Korea	10	10	15
Lebanon	0	0	30
Malta	10/15 (d)	0	10
Mauritius	0	0 (f)	10
Mongolia	5 (h)	5 (h)	10
Netherlands	10 (i)	0	5
Pakistan	10	10 (g)	10
Poland	5 (j)	5 (j)	15
Romania	1	1	20
Russian Federation	5 (c)	0	10
Singapore	0	7 (b)	10
Sri Lanka	5/10	10	20
Sudan	5 (h)	5 (h)	10
Switzerland	15	10	10
Syria	0	10 (k)	20
Tunisia	10 (c)	2.5 (b)	5
Turkey	10	10	10
Ukraine	5 (f)	0	10
United Kingdom	5/15 (e)	0	10
Yugoslavia	5/10 (l)	10	10
Nontreaty countries	0	0	0

- (a) The rate is 0% for amounts paid to a company of which the government owns at least 20% of the equity.
- (b) The rate is 0% for interest paid to the government of the other contracting state. Under the Ethiopia treaty, the rate is also 0% for interest paid to entities in which the government owns a specified percentage of the equity and for interest paid on loans guaranteed by the government.
- (c) The rate is 0% for dividends and interest paid to the government of the other contracting state. Under the Ethiopia treaty, the rate is also 0% for dividends paid to entities in which the government owns a specified percentage of the equity.
- (d) The rate is 10% for dividends paid to the government of Kuwait or any of its institutions or any intergovernmental entities. The rate is 15% for other dividends.
- (e) The 5% rate applies if the recipient of the dividends owns directly or indirectly at least 10% of the payer. The 15% rate applies to other dividends.
- (f) The rate is increased to 5% if the beneficial owner of the interest carries on business in the other contracting state through a permanent establishment and the debt on which the interest is paid is connected to such permanent establishment.
- (g) The rate is 0% for amounts paid to the government of the other contracting state and to entities of which the government owns at least 51% of the paid up capital.

- (h) For dividends and interest, the rate is 0% if the payments are made to the government or a governmental institution of the other contracting state, or to a company that is a resident of the other contracting state and is controlled by, or at least 49% of the capital is owned directly or indirectly by, the government and a governmental institution. A 0% rate also applies to interest arising on loans guaranteed by the government of the other contracting state or by a governmental institution or other governmental entity of the other contracting state.
- (i) A 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the company paying the dividends.
- (j) The rate is 0% if the payments are made to the government or a governmental institution of the other contracting state, or to a company that is a resident of the other contracting state and is controlled by, or at least 25% of the capital is owned directly or indirectly by, the government or a governmental institution of the other contracting state.
- (k) The rate is 0% if the beneficial owner of the interest is a resident in the other contracting state and the loan is secured or financed directly or indirectly by a financial entity or other local body wholly owned by the government of the other contracting state.
- (l) The 5% rate applies if the recipient of the dividends owns directly or indirectly at least 25% of the payer. The 10% rate applies to other dividends.
- (m) The rate is 5% if the beneficial owner of the dividends is a company that owns 10% or more of the issued and outstanding voting shares or 25% or more of the value of all of the issued and outstanding shares. The 15% rate applies to other dividends.

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*Because of the rapidly changing tax law in Latvia, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	15
Capital Gains Tax Rate (%)	15
Branch Tax Rate (%)	15
Withholding Tax (%) (a)	
Dividends	0/10 (b)
Interest	5/10 (c)
Royalties	5/15 (d)
Management and Consulting Fees	10
Payments for the Use of Property	
Located in Latvia	5
Gains on Transfers of Shares of Real Estate Located in Latvia	2 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) These taxes apply to payments by Latvian residents or permanent establishments to nonresidents.
- (b) No withholding tax is imposed on dividends paid by Latvian entities to legal entities resident in the European Union (EU) or the European Economic Area (EEA), or their permanent establishments.
- (c) Interest withholding tax applies only to interest paid to associated companies or persons. The 5% rate applies to interest paid by Latvian-registered banks; the 10% rate applies to other interest payments.
- (d) The 15% rate applies to copyright royalties; the 5% rate applies to royalties on other types of intellectual property.
- (e) This is a final withholding tax imposed on gains derived by nonresident companies without a permanent establishment in Latvia from sales of Latvian real estate. This tax also applies to sales of shares if certain conditions are met (see Section B).

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Under the Law on Corporate Income Tax, Latvian (resident) companies are subject to income tax on their worldwide income. Nonresident companies without a permanent establishment in Latvia are subject to tax on their Latvian-source income.

Resident companies include companies registered in Latvia and companies incorporated in foreign countries that are registered in Latvia as branches or permanent establishments. All other companies are considered to be nonresident companies. Nonresident companies operating through a permanent establishment in Latvia are subject to tax on income derived by the permanent establishment in Latvia as well as on income independently derived abroad by the permanent establishment. If a nonresident company engages directly in business activities that are similar to the business activities performed by its permanent establishment or subsidiary

in Latvia, income derived from the nonresident company's activities is included in the taxable income of the permanent establishment or the subsidiary.

**Tax Rates.** Enterprises are subject to income tax at a rate of 15%.

**Tax Incentives.** Companies that enter into an agreement with the management of the Liepaja or Rezekne special-economic zones or the Riga and Ventspils free ports benefit from several tax incentives including an 80% rebate of corporate income tax on income derived from the relevant zone and an 80% rebate of withholding tax on dividends and management and service fees paid to non-residents.

**Capital Gains.** Resident companies and nonresident companies operating through a permanent establishment in Latvia include capital gains in taxable income.

For nonresident companies without a permanent establishment in Latvia, the final withholding tax is imposed on proceeds received from the sale of Latvian real estate, as well as from the sale of shares of a company if in the tax year of the sale or in the preceding year, 50% or more of the company's assets directly or indirectly consists of real estate located in Latvia. Withholding tax at a rate of 2% is imposed on income from the sale of Latvian real estate or from the sale of a company's shares.

**Administration.** The tax year is either the calendar year or another year stipulated in the charter of the company.

An annual income declaration must be filed with the State Revenue Service within 30 days after the annual shareholders' meeting, but not later than four months after the end of the tax year. In certain cases, the annual income tax declaration can be filed within seven months after the end of the tax year.

Companies must make advance payments of tax by the 15th day of each month. For the months before and including the month of filing the annual income declaration, up to a maximum of four months, the monthly advance payments are equal to  $\frac{1}{12}$  of the tax calculated for the year two years before the current year, adjusted for inflation. For the remaining months, monthly advance payments are equal to  $\frac{1}{8}$  of the tax calculated for the preceding year, adjusted for inflation and reduced by the advance tax payments made in accordance with the rule described in the preceding sentence.

Any balance of tax due must be paid to the State Revenue Service within 15 days after the submission date for the annual income declaration, or within 15 days after the filing deadline for the annual income tax declaration if the declaration was submitted after the deadline.

**Dividends.** Dividends paid by a resident company out of profits taxed under the Law on Corporate Income Tax are not included in the taxable income of a resident recipient company. This rule does not apply if the payer is enjoying a tax holiday.

A resident company is not taxable on dividends received from a nonresident company if both of the following conditions are satisfied:

- The resident company owns directly at least 25% of the capital and voting rights of the payer at the time of the payment of the dividends; and
- The payer is a resident of a state or territory that has not been recognized as a low-tax or no-tax state or territory in accordance with cabinet regulations.

**Foreign Tax Relief.** A foreign tax credit is available to resident companies for foreign tax paid on income earned abroad. The amount of credit may not exceed an amount equal to the tax that would be imposed in Latvia on the income earned abroad.

### C. Determination of Taxable Income

**General.** Taxable income is the income reported in a company's profit and loss statements, prepared in accordance with the Latvian accounting law and subject to certain adjustments specified in the Law on Corporate Income Tax.

For corporate income tax purposes, companies may not deduct interest expenses that exceed the lower of the following amounts:

- An amount equal to the average amount of liabilities multiplied by the average short-term interest rate determined by the Central Statistics Bureau in credit institutions as of the last month of the tax year (7.3% for 2006), which is multiplied by a coefficient of 1.2.
- The actual amount of the interest divided by a coefficient C. Coefficient C is calculated using the following formula:

$$C = \frac{D}{4} \times (E - R)$$

The following are the values of the items in the formula:

- D = average liabilities;
- E = total equity; and
- R = amounts in long-term revaluation reserve and similar reserves that have not resulted from profit distributions.

The amount of interest that exceeds the deductible amount may not be used to reduce taxable income in future tax years.

**Inventories.** Inventories can be valued using the first-in, first-out (FIFO) or weighted-average methods.

Expenditure on low-value inventory may be fully deducted in the year of the expenditure.

**Tax Depreciation.** Tax depreciation is calculated using the declining-balance method.

Depreciation rates range from 10% (buildings and structures) to 70% (computing devices and related equipment).

Companies operating in subsidized regions may increase the acquisition value of fixed assets by up to twice the value of the assets. The subsidized regions, which are less developed regions of Latvia, are determined by law.

The Law on Corporate Income Tax provides for the depreciation of the acquisition value or establishment value of new manufacturing technological equipment. For this purpose, "acquisition value" is the amount paid to purchase such equipment, while "establishment value" is the total expenditure incurred to create



such equipment. Before calculating the depreciation, the acquisition or establishment value may be increased by multiplying such value by a coefficient, which is 1.3 for 2008, 1.2 for 2009 and 1.1 for 2010.

The acquisition price of patents, licenses and trademarks is amortized using the straight-line method for 5 years, but concessions (as defined in the Latvian Concession Law) are amortized over 10 years. Patents, licenses and trademarks that are issued for a term of less than five years can be written off for tax purposes during the period of their validity. Research and development costs can be written off for tax purposes the same year in which they are incurred. Amortization of other intangible assets (trade secrets and goodwill) is not allowed.

Tax depreciation may not be claimed for a “representation automobile,” which is defined as an automobile that meets all of the following criteria:

- It has no more than eight passenger seats plus the driver’s seat;
- The purchase value is greater than LVL 25,424 (approximately €36,175) without value added tax (VAT) or LVL 30,000 (approximately €42,690) with VAT;
- It is not an emergency vehicle;
- It is not a specialized automobile for disabled persons; and
- It is not a promotion automobile.

**Relief for Losses.** Losses may be carried forward five years. Losses may not be carried back.

**Groups of Companies.** Losses within a group of companies may offset income within the group if certain requirements are met. The parent company must be one of the following: a Latvian resident; a resident of an EEA country; or a resident of a country with which Latvia has entered into a double tax treaty if the treaty does not provide that the parent is also a resident of another state. To qualify for group relief, the parent must own directly or indirectly at least 90% of the subsidiaries’ capital rights and the parent-subsidiary relationship must exist throughout the entire tax year.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax on goods and services, including imports	
Standard rate	18
Medical services, guest accommodation services and supplies of books and subscriptions	5
Exports	0
Social security contributions, paid by	
Employer	24.09
Employee	9
Property tax	1.5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Latvian currency is the lats (LVL). No significant foreign-exchange controls are imposed in Latvia.

**Transfer Pricing.** The Latvian legislation provides that an arm's length principle must be followed in all transactions. The Latvian tax authorities may redefine the transaction between related parties and recalculate the tax base if it has grounds to suspect intentional tax evasion. Transfer-pricing methods, such as comparable uncontrolled prices, resale prices, cost-plus, profit-split and transactional net margin, may be used to assess the market price in transactions between related parties. The generally accepted practice for transfer-pricing issues is based on the Organization for Economic Cooperation and Development (OECD) transfer pricing guidelines.

## F. Treaty Withholding Tax Rates

The table below lists the rates under Latvia's tax treaties. The nontreaty rate applies if it is lower than the treaty rate.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Armenia	5/15 (a)	10	10
Austria	5/10 (a)	10	5/10 (b)
Azerbaijan	5/10 (a)	10	5/10 (b)
Belarus	10	10	10
Belgium	5/15 (a)	10	5/10 (b)
Bulgaria	5/15 (a)	5	5/7 (k)
Canada	5/15 (c)	10	10
China	5/10 (a)	10	10
Croatia	5/15 (a)	10	10
Czech Republic	5/15 (a)	10	10
Denmark	5/15 (a)	10	5/10 (b)
Estonia	0/15 (d)	0	0
Finland	5/15 (a)	10	5/10 (b)
France	5/15 (h)	10	5/10 (b)
Georgia	5/10 (a)	10	10
Germany	5/10 (a)	10	5/10 (b)
Greece	5/10 (a)	10	5/10 (b)
Hungary	5/10 (a)	10	5/10 (b)
Iceland	5/15 (a)	10	5/10 (b)
Ireland	5/15 (c)	10	5/10 (b)
Israel	5/10/15 (m)	5/10 (n)	5
Kazakhstan	5/15 (a)	10	10
Lithuania	0/15 (d)	0	0
Macedonia	5	5	5/10 (l)
Malta	5/10 (a)	10	10
Moldova	10	10	10
Netherlands	5/15 (a)	10	5/10 (b)
Norway	5/15 (a)	10	5/10 (b)
Poland	5/15 (a)	10	10
Portugal	10	10	10
Romania	10	10	10
Serbia and Montenegro	5/10 (a)	10	5/10 (o)
Singapore	5/10 (a)	10	7.5
Slovak Republic	10	10	10
Slovenia	5/15 (a)	10	10
Spain	5/10 (a)	10	5/10 (b)
Sweden	5/15 (a)	10	5/10 (b)
Switzerland	5/15 (j)	10	5/10 (b)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Turkey	10	10	5/10 (b)
Ukraine	5/15 (a)	10	10
United Kingdom	5/15 (c)	10	5/10 (b)
United States	5/15 (g)	10	5/10 (b)
Uzbekistan	10	10	10
Nontreaty countries	10 (i)	5/10 (e)	5/15 (f)

- (a) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 25% of the capital of the payer of the dividends.
- (b) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
- (c) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the voting power of the payer of the dividends.
- (d) The 0% rate applies if the recipient of the dividends is a company (or a partnership) that holds 25% of the capital and voting power of the payer of the dividends.
- (e) Interest withholding tax applies only to interest paid to associated companies or persons. The 5% rate applies to interest paid by Latvian-registered banks; the 10% rate applies to other interest payments.
- (f) The 15% rate applies to copyright royalties; the 5% rate applies to royalties for other types of intellectual property.
- (g) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the voting power of the payer of the dividends.
- (h) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the payer of the dividends.
- (i) Effective from 1 May 2004, no withholding tax is imposed on dividends paid by a Latvian entity to a legal entity resident in the EU if, at the time of payment of the dividends, the recipient of the dividends has held 25% of the share capital and voting rights of the payer of the dividends for at least two years.
- (j) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 20% of the capital of the payer of the dividends.
- (k) The 7% rate applies to royalties paid for the use of, or the right to use, cinematographic films and films or tapes for radio or television broadcasting, patents, trademarks, designs, and models, plans, secret formulas or processes. The 5% rate applies to other royalties.
- (l) The 10% rate applies to royalties paid for the use of, or the right to use, cinematographic films or films or tapes for radio or television broadcasting. The 5% rate applies to other royalties.
- (m) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 10% of the capital of the payer of the dividends. The 10% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 10% of the capital of the payer of the dividends and if the dividends are paid out of profits that are exempt from tax or subject to tax at a rate lower than the normal Israel tax rate under the Israel investment encouragement law.
- (n) The 5% rate applies to interest paid by Israel-registered banks. The 10% rate applies to other interest payments.
- (o) The 5% rate applies to royalties paid for the use, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films and films or tapes and other means of image or sound reproduction for radio or television broadcasting. The 10% rate applies to royalties paid for the following: the use, or the right to use, patents, trademarks, designs or models, plans, secret formulas or processes, or industrial, commercial or scientific equipment; and information concerning industrial, commercial or scientific experience.

## LEBANON

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**A. At a Glance**

Corporate Income Tax Rate (%)	15
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	15
Withholding Tax (%)	
Dividends	10 (a)
Interest	10 (a)(b)
Royalties from Patents, Know-how, etc.	10 (c)
Payments for Services	7.5 (a)
Branch Remittance Tax	10 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) Applicable to both residents and nonresidents.  
(b) Bank interest is subject to a 5% withholding tax.  
(c) Applicable if the royalties are received by Lebanese holding companies (see Section B).  
(d) Profits derived by branches operating in Lebanon are presumed to be distributed and consequently are subject to dividend withholding tax.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Lebanese companies and branches of foreign companies carrying on business in Lebanon are subject to tax only on their income derived from Lebanon. A company is considered Lebanese if all of the following apply:

- It is registered in Lebanon;
- Its registered office is situated in Lebanon; and
- The majority of its directors are of Lebanese nationality (unless the government authorizes the company to have less than a majority).

**Rates of Corporate Income Tax.** In general, companies are subject to tax at a flat rate of 15%.

Profits derived in Lebanon by branches of foreign companies are presumed to be distributed and consequently are subject to the 10% dividend withholding tax.

Contractors on government projects are subject to tax at the regular corporate rate on a deemed profit of 10% of actual gross receipts.

Lebanese holding companies and offshore companies are exempt from corporate income tax. However, special taxes apply to these companies (see Section D). A Lebanese holding company is a special type of company that is formed to hold investments in and outside Lebanon ("holding company" is not synonymous with "parent company"). An offshore company is a company that engages exclusively in business transactions outside Lebanon.

Insurance companies are subject to tax at the regular corporate income tax rate of 15% on a fixed percentage of their premium income, which varies by category of insurance.

Lebanese air and sea transport companies are exempt from corporate income tax. Foreign air and sea transport companies are also exempt from corporate income tax if their home countries grant reciprocal relief to Lebanese companies.

Profits derived by industrial enterprises established in Lebanon after 1 January 1980 are exempt from income tax for up to 10 years from the date of commencement of production if such enterprises satisfy all of the following conditions:

- The factory is built in certain areas the government intends to develop;
- The object of the enterprise is to manufacture new goods and materials that were not manufactured in Lebanon before 1 January 1980; and
- The total value of property, plant and equipment used in Lebanon by the new enterprise and allocated for the production of new goods and materials is at least LL 500 million.

Profits qualifying for this tax holiday may not exceed the original cost of the property, plant and equipment used by the enterprise on the date production begins.

**Capital Gains.** Capital gains on the disposal of fixed assets are taxed at a rate of 10%.

If a company reinvests all or part of a capital gain subject to the 10% rate to construct permanent houses for its employees during a two-year period beginning with the year following the year in which the gain was realized, it may obtain a refund of the tax imposed on the reinvested gain.

**Administration.** The official tax year is the calendar year. Companies or branches may use a different tax year if they obtain the prior approval of the tax authorities.

Corporations with a financial year-end of 31 December must file their tax returns by 31 May of the year following the year in which the income is earned. Other corporations must file their returns within five months of their financial year-end. The head of the Revenue Department of the Ministry of Finance may grant a one-month extension at the request of the taxpayer if the taxpayer's circumstances warrant the extension. Tax must be paid when the return is filed.

If a taxpayer does not submit timely returns, the tax authorities may levy tax on an amount of deemed profit and impose a fine of 10% of such tax for each month or part of a month that has elapsed since the due date. The fine may not exceed the tax due. For failure to pay tax by the due date, a penalty of 2% of the

tax due is imposed for each month or part of a month that the tax remains unpaid.

**Dividends and Interest.** In general, dividends and interest are subject only to a withholding tax of 10%.

Dividends received by a Lebanese corporation from another Lebanese corporation are exempt from tax. However, dividends redistributed by a parent company to its shareholders or partners are subject only to a withholding tax of 10%.

Dividends distributed by Lebanese holding companies and offshore companies are exempt from dividend withholding tax.

Dividends and interest income earned by banks and financial institutions are considered trading income and consequently are subject to tax at the regular corporate tax rate of 15%.

**Foreign Tax Relief.** Lebanon has entered into double tax treaties with several countries (see Section F).

### C. Determination of Trading Income

**General.** The tax assessment is based on audited financial statements prepared according to generally accepted accounting principles, subject to certain adjustments.

Deductions are allowed for expenses incurred wholly and exclusively for business purposes. Branches, subsidiaries and affiliates of foreign companies may deduct the portion of foreign head office overhead charged to them if the auditors of the head office present to the tax authorities a certificate confirming that the overhead was fairly and equitably allocated to the various subsidiaries, associated companies and branches and that the amount of head office overhead charged back to the Lebanese entity is in accordance with the limits set by the Ministry of Finance. However, both the deductible and nondeductible portions of the overhead charged back to the Lebanese entity are subject to a tax of 7.5% (see Section D).

**Inventories.** Inventories are normally valued at the lower of cost or net realizable value. Cost is usually determined using the first-in, first-out (FIFO) or weighted-average cost method.

**Provisions.** The following are the only provisions that are allowed for tax purposes:

- The actual amount due to employees on the balance sheet date for end-of-service indemnities; and
- Doubtful debts owed by debtors that have been declared legally bankrupt.

Banks and financial institutions may deduct provisions for doubtful debts before declaration of bankruptcy of the debtor if they obtain the approval of the Banking Control Commission of the Central Bank of Lebanon.

**Tax Depreciation.** Depreciation must be calculated using the straight-line method. In Decision 839/1, dated 21 August 2007, the Ministry of Finance revised the minimum and maximum depreciation rates. A company may select appropriate rates within these limits for its activities. The following are some of the minimum and maximum rates.

<b>Assets</b>	<b>Minimum Rate (%)</b>	<b>Maximum Rate (%)</b>
Developed buildings from concrete for use in the commercial, tourism and service sectors (for example, offices, shops, stores, restaurants, hotels and hospitals)	2	5
Developed buildings from concrete that are used for industry and handicrafts	3	10
Developed buildings from metal for commercial and industrial use	6	20
Large renovations, maintenance and decoration works for buildings	6	20
Technical installations, industrial equipment and accessories	8	25
Computer hardware and software	20	50
Cars	10	25
Vehicles for transportation of goods and people	6	20
Means of sea transport	5	10
Means of air transport	20	25
Office equipment, furniture and fixtures	8	25
Nonconsumable tools in restaurants and coffee shops (for example, glass cups and silver spoons)	— *	— *
Gas bottles	8	20

\* These items are subject to count each year and are valued at cost.

**Relief for Tax Losses.** Tax losses may be carried forward for three years.

**Groups of Companies.** Parent companies must prepare consolidated financial statements that incorporate the activities of their associated companies and subsidiaries. However, each legal entity is taxed separately.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax (VAT); imposed on the supply of goods and services by a taxable person in the course of an economic activity in Lebanon and on imports; certain supplies are exempt; registration with the Directorate of VAT is required if an entity's total taxable turnover for the four preceding quarters exceeded LL 150 million; all persons performing taxable economic activities have the option of registering, regardless of the amount of turnover	
Standard rate	10%
Tax on portion of foreign head office overhead allocated to a Lebanese subsidiary, associated company or branch	7.5%
Customs duties on imported goods	Various

Nature of Tax	Rate
Social security contributions	
Sickness and maternity, on monthly salaries up to LL 1,500,000; paid by Employer Employee	7% 2%
Family allowances, on monthly salaries up to LL 1,500,000; paid by employer	6%
End-of-service indemnity, on monthly salaries; paid by employer	8.5%
Stamp duty on documents, such as issues of share capital, corporate bonds, commercial bills, lease agreements and employment agreements (contracts related to foreign transactions of Lebanese offshore companies are exempt)	
General rate	0.3%
Built property tax; imposed on rental income generated by entities subject to income tax; such income is not subject to corporate income tax and is excluded from the taxable results together with the related expenses; the annual net income from each parcel of real estate is separately subject to built property tax	
Net income not exceeding LL 20 million	4%
Net income exceeding LL 20 million, but not exceeding LL 40 million	6%
Net income exceeding LL 40 million, but not exceeding LL 60 million	8%
Net income exceeding LL 60 million, but not exceeding LL 100 million	11%
Net income exceeding LL 100 million	14%
Municipal taxes on developed property	
Sidewalk and sewage tax, paid by landlords on annual gross rental from buildings (since 1989, however, the municipalities have collected this tax from tenants)	1.5%
Security and cleaning tax, paid by tenant on a percentage of the rental value of buildings (nonprofit enterprises are exempt from this tax)	
Residential buildings (minimum tax of LL 5,000)	5%
Nonresidential buildings (minimum tax of LL 10,000)	7%
Registration duty, paid by purchaser of land or buildings; levied on fair-market value of building, which is deemed to be 20 times the fair annual rental income set by the government (approximate rate)	6%
Annual tax on total capital and reserves of Lebanese holding companies, up to a maximum tax of LL 5 million (tax is due in full from the first year of company's operations, regardless of the month operations begin); imposed on amounts	
Not exceeding LL 50 million	6%
Exceeding LL 50 million but not exceeding LL 80 million	4%
Exceeding LL 80 million	2%



<b>Nature of Tax</b>	<b>Rate</b>
Annual tax on Lebanese offshore companies (tax is imposed in full from the first year of company's operations, regardless of the month operations begin)	LL 1 million

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Lebanon does not impose any foreign-exchange controls.

**Antiavoidance Legislation.** Under the Lebanese tax law, criminal or tax penalties may be imposed for specified tax avoidance schemes.

**Related-Party Transactions.** Transactions with related entities must be on an arm's length basis.

## F. Tax Treaties

Lebanon has entered into double tax treaties with the following countries: Algeria; Armenia; Bahrain; Belarus; Bulgaria; Canada; Cuba; Cyprus; the Czech Republic; Egypt; France; Gabon; Iran; Italy; Jordan; Kuwait; Malaysia; Malta; Morocco; Oman; Poland; Romania; the Russian Federation; Senegal; Sudan; Syria; Tunisia; Ukraine; United Arab Emirates; and Yemen.

## LESOTHO

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## A. At a Glance

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (a)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%) (b)	
Dividends	25 (c)
Interest	25

Royalties from Patents, Know-how, etc.	25 (d)
Payments for Services	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) For manufacturing companies, the rate is 10%.  
 (b) These withholding taxes apply only to payments to nonresidents.  
 (c) Final withholding tax. Dividends paid by manufacturing companies are exempt from withholding tax.  
 (d) For royalties paid by manufacturing companies, the rate is 15%.

## B. Taxes on Corporate Income and Gains

**Company Tax.** Company tax is imposed only on Lesotho-source income that is received during an accounting period. Income received from any source by companies registered or incorporated in Lesotho is deemed to be income derived from a source within Lesotho. A company is deemed to be registered in Lesotho if the company's memorandum and articles are filed with the Registrar of Companies or if it is managed and controlled in Lesotho.

**Rates of Company Tax.** The tax rate is 25%, but it is reduced to 10% for profits from manufacturing operations.

**Capital Gains.** Capital gains are treated as ordinary income and subject to tax at the regular corporate income tax rate.

**Administration.** The Income Tax Act does not require companies to use a specific year-end. However, a majority of companies use the same year-end, 31 March, as the Lesotho government.

Returns must be filed within 30 days after they are issued. If a return is not filed, the Commissioner of Income Tax issues an estimated assessment.

Tax levied under the Income Tax Act must be paid at the place and by the date specified in the notice of assessment. If the tax is not paid by the date specified, a penalty of 5% of the amount due and unpaid is immediately payable. Additional penalties of 10% of the amount due and unpaid, including any penalties, must be paid for each three-month period that the tax remains unpaid beyond the date specified in the assessment.

**Dividends.** Resident companies are exempt from tax on the dividend income they receive, but they may not deduct related expenses or dividends declared. Resident companies are companies that are both registered and incorporated in Lesotho. Dividends paid to nonresidents are subject to a final withholding tax at a rate of 25%. Dividends paid by manufacturing companies are exempt from withholding tax.

**Foreign Tax Relief.** In the absence of treaty relief provisions, unilateral relief is granted through a credit for foreign taxes paid on income earned abroad. The amount of the credit is the lesser of the foreign tax paid and the Lesotho tax on the foreign-source income.

## C. Determination of Trading Income

**General.** Taxable income is financial statement income adjusted as required by the Income Tax Act. To be eligible for deduction, expenses must be incurred in the production of income, and they must not be of a capital nature.

**Inventory.** Inventories are valued at the lower of cost or realizable value. Cost is determined using the first-in, first-out (FIFO) method.

**Provisions.** Provisions are deductible in the year of assessment in which they arise, but provisions not used must be added back to income in the following year.

**Depreciation.** Depreciation is computed using the declining-balance method at the following rates.

Asset	Rate (%)
Motor vehicles	25
Furniture, fixtures and office machines	20
Plant and machinery	20
Other assets	10

**Relief for Losses.** Assessed losses may be carried forward for an unlimited period. A carryback of losses is not allowed.

**Groups of Companies.** Companies in a group may not share their tax losses with profitable companies in the group.

#### D. Value-Added Tax

Value-added tax is levied at the following rates: liquor, 15%; electricity and telecommunications, 5%; and other sales, 14%.

#### E. Tax Treaties

Lesotho has entered into tax treaties with South Africa and the United Kingdom.

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*This chapter reflects the tax law in Liechtenstein as of 1 January 2008.*

#### A. At a Glance

Corporate Income Tax Rate (%)	20 (a)
Capital Gains Tax Rate (%)	34.02 (a)
Branch Tax Rate (%)	20 (a)

Withholding Tax (%)	
Dividends	4 (b)
Interest	4 (b)(c)
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This is a maximum rate. See Section B.  
 (b) This withholding tax applies to residents and nonresidents.  
 (c) The rate is 0% on certain interest income. See Section F.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporate tax law distinguishes between companies with business activities in Liechtenstein, including foreign enterprises with permanent establishments in Liechtenstein, and special tax-advantaged holding companies and domiciliary companies. Holding companies are companies with a registered seat in Liechtenstein that limit their activities to the administration or management of assets or investments, particularly participations. Domiciliary companies are legal entities having only their legal seat in Liechtenstein and not carrying on any business or commercial activity within the country.

Resident corporations carrying on activities in Liechtenstein are generally taxed on worldwide income other than income from foreign real estate. Subject to discussions with the tax authorities, income from permanent establishments abroad may also be exempt.

Branches of foreign corporations and nonresident companies owning real property in Liechtenstein are subject to tax on income attributable to the branch or real property and capital invested in the branch or real property.

**Rates of Corporate Tax.** Companies with business activities in Liechtenstein and foreign enterprises with permanent establishments in Liechtenstein are subject to income tax. The rates are graduated based on the company's return-on-equity ratio. The minimum rate is 7.5%, and the maximum rate, which applies if the return-on-equity is more than 30%, is 15% of taxable income.

The applicable tax rate is increased if distributed dividends exceed 8% of taxable capital. The increase is one to five percentage points, depending on the dividend distribution percentage, with the maximum increase applicable to dividend distributions exceeding 24% of taxable capital. The maximum income tax rate is therefore 20% and is reached if the return-on-equity is more than 30% and if the distributed dividends exceed 24% of taxable capital.

Holding companies and domiciliary companies are exempt from income tax. They are, however, subject to capital tax, but at a reduced rate (see Section D).

**Capital Gains.** Capital gains, except those resulting from sales of real property, are included in income and subject to tax at the regular rates.

Real estate profits tax applies to capital gains from the sale of real property. The basic rate of 1.08% is increased for surcharges

based on how long the property was held and the amount of taxable profit. The maximum rate is 34.02%.

**Administration.** The tax year for a company is its fiscal year.

Companies with operations in Liechtenstein must file their tax return and financial statements within six weeks after the adoption of their financial statements at the annual shareholders' meeting, but no later than 1 July of the year following the end of the fiscal year. The tax authorities issue a tax assessment, generally in the second half of the calendar year, which must be paid within 30 days of receipt. If they obtain approval from the tax administration, companies may pay their tax in installments.

Within six months after their fiscal year-end, holding and domiciliary companies with commercial activities are required to submit audited financial statements to the tax authorities. Holding and domiciliary companies without commercial activities must confirm that they are not engaged in such activities and that they have prepared an asset and liability statement. Their taxes (see Section D) are payable in advance.

**Dividends.** Dividends are included in the taxable income of companies subject to tax.

Withholding tax (known as coupon tax) applies to distributions of stock corporations (and other companies with capital divided into shares, which are rare). Distributions subject to withholding tax include dividends, profit shares and other monetary contributions and allowances, such as liquidation distributions. The withholding rate is 4%.

**Foreign Tax Relief.** Neither Liechtenstein law nor the practice of the tax authorities provides for the avoidance of double taxation of foreign income taxed abroad. Double taxation issues should be discussed with the tax authorities.

### **C. Determination of Trading Income**

**General.** Taxable income is accounting income, subject to adjustments for tax purposes and excluding income from foreign real property and, depending on discussions with the tax authorities, income from permanent establishments situated abroad.

Expenses related to the company's business are generally deductible. Taxes are deductible, except for tax withheld by the company on behalf of the owner of the income.

Nondeductible expenses include hidden distributions to shareholders or related persons and excessive depreciation.

**Inventories.** Inventories must be valued at the lower of cost or market value, with cost calculated using the first-in, first-out (FIFO) or average-cost method. Companies may establish a general inventory reserve of up to one-third of the inventory cost or market value at the balance sheet date if detailed inventory records are available for review by the tax authorities. The need for a reserve exceeding this amount must be documented to the satisfaction of the tax authorities.

**Depreciation.** Depreciation of fixed assets that is commercially justified and recorded in the statutory accounts may be deducted

for tax purposes. The straight-line and declining-balance methods are acceptable. The following are acceptable declining-balance rates: 5% for industrial buildings; 20% for office equipment and furnishings; 30% for machinery, equipment, computers and vehicles other than automobiles; and 35% for automobiles.

**Relief for Losses.** Losses may be carried forward to offset income in the five years following the year of the loss. Losses may not be carried back.

**Groups of Companies.** Liechtenstein has no provisions for group taxation. Each company in a group is taxed as a separate entity.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax	
Standard rate	7.6
Reduced rate (on basic necessities, such as food and medicine)	2.4
Capital tax, on taxable capital	
Companies with operations in Liechtenstein	0.2
Holding companies and domiciliary companies (minimum tax is CHF 1,000)	0.1
Stamp duty on capital; imposed on incorporations and increases in capital; the first CHF 1 million is exempt	1
Payroll taxes	
Social security contributions, on gross salary; paid by	
Employer	4.998
Employee	4.55
Accident insurance, imposed on gross salary; rates vary depending on the extent of coverage	
On the job, paid by employer (approximate rate)	1
Off the job, two-thirds paid by employee and one-third paid by the state	1.35
Unemployment insurance; paid by	
Employer (monthly maximum, CHF 243)	0.25
Employee (monthly maximum, CHF 243)	0.25
Company pension fund, imposed on gross salary; minimum contribution (approximate rate, depending on plan); paid by	
Employer	5
Employee	5
Child allowance, imposed on gross salary; paid by employer	2.1
Health insurance, imposed on gross salary; paid in equal amounts by employer and employee (approximate rate)	3

#### E. Transfer Pricing

Intercompany charges should be determined at arm's length. It is possible to reach an agreement in advance with the tax authorities concerning arm's length pricing.

## F. Treaty Withholding Tax Rates

The rates shown are the lower of the treaty rates or the normal domestic rates.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Austria	4	0/4*	0
Nontreaty countries	4	0/4*	0

\* A 4% rate applies to interest on bonds, on time deposits with domestic banks that have terms exceeding one year and on loans exceeding CHF 50,000 with terms exceeding two years. The 0% rate applies to other interest, including interest paid on intercompany loans.

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## A. At a Glance

Corporate Profit Tax Rate (%)	15 (a)
Capital Gains Tax Rate (%)	15 (b)
Branch Tax Rate (%)	15 (a)
Withholding Tax (%) (c)	
Dividends	0/15 (d)
Interest	10 (e)
Royalties and Know-how	10 (e)
Sale, Rent or Other Transfer of Real Estate Located in Lithuania	10 (e)
Compensation for Violations of Copyrights or Related Rights	10 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3/5 (f)

- This is the standard rate of profit tax. Reduced rates apply to small companies and to companies registered and operating in free-economic zones that satisfy certain conditions.
- In general, capital gains are included in taxable profit and are subject to tax at the regular profit tax rate. A capital gain derived from the sale of shares of a company registered in a European Economic Area (EEA) country or in another tax treaty country is exempt from tax if the shares have been held for at least two years and if the holding represents at least 25% of shares of the company throughout that period.
- The withholding tax rates may be reduced by applicable tax treaties.
- The rate is 0% if the recipient is a company (not located in a tax haven) that holds more than 10% of the shares of the payer of the dividends for a period of at least 12 months. The dividend withholding tax is a final tax.
- These withholding taxes apply to payments to nonresident companies.
- Losses from disposals of securities and derivative financial instruments may be carried forward three years to offset gains derived from disposals of such

items. Losses from the disposal of shares of companies registered in an EEA country or in another tax treaty country cannot be carried forward if the shares have been held for at least two years and if the holding represents at least 25% of shares of the company throughout that period. However, these losses can be offset against capital gains derived from disposals of securities and derivative financial instruments. Other losses may be carried forward five years.

## B. Taxes on Corporate Income and Gains

**Profit Tax.** Under the Law on Profit Tax, Lithuanian companies are subject to profit tax on their worldwide income. Lithuanian (resident) companies are defined as enterprises with the rights of legal persons registered in Lithuania. For purposes of the profit tax, Lithuanian companies include companies formed in Lithuania and companies incorporated in foreign countries that are registered in Lithuania as branches or permanent establishments.

Foreign (nonresident) companies, which are defined as companies not incorporated in Lithuania, are subject to profit tax on their Lithuanian-source income only.

A foreign enterprise is deemed to have a permanent establishment in Lithuania if it satisfies any of the following conditions:

- It has a place of activity in Lithuania through which it carries out activities in Lithuania;
- It carries out activities in Lithuania through an individual, legal entity or other person that is authorized to enter into contracts on behalf of the foreign enterprise and habitually exercises such authorization;
- It engages in construction activities in Lithuania; or
- It engages in the exploration or extraction of natural resources in Lithuania.

### Tax Rates

The standard profit tax rate is 15%.

A 13% rate applies to small entities with annual income not exceeding LTL 500,000 and an average number of employees that does not exceed 10 for the tax year.

Entities registered and operating in a free economic zone benefit from 100% exemption from profit tax for 6 years and a further 50% reduction in profit tax for an additional 10 years if they make investments in fixed assets of at least €1 million and if at least 75% of the entity's income is derived from production, processing, storage and wholesale trade in goods stored in the zone and services related to such activities. Currently, the only free economic zones are Kaunas and Klaipėda Free Economic Zones.

Companies with 40% or more employees included in target groups (for example, disabled individuals and long-term unemployed) are eligible for a 0% tax rate.

Nonprofit entities are subject to profit tax if they engage in business activities. If the annual business income of a nonprofit entity does not exceed LTL 1,000,000, a 0% tax rate applies to the first LTL 25,000 of taxable profit. The balance of the taxable profit is subject to tax at a rate of 15%.

Entities engaged in international transportation by ships or in a directly related activity can elect to be taxed on a special tax base equal to the net tonnage of their fleet. The tax on such entities is



calculated by applying the 15% corporation tax to the net tonnage instead of to the taxable profit of the entities.

**Capital Gains.** Capital gains are included in taxable profit and are subject to tax at the regular profit tax rate, except for gains and losses derived from disposals of securities and derivatives. Gains and losses on securities and derivatives are included in a separate tax base that is subject to tax at the regular profit tax rate. A capital gain derived from the sale of shares of a company registered in a European Economic Area (EEA) country or in another tax treaty country is exempt from tax if the shares have been held for at least two years and if the holding represents at least 25% of the shares of the company throughout that period.

### **Administration**

*Tax Year.* The tax year is the calendar year. Companies may request permission to use a different 12-month tax year, which must be used continuously.

*Profit Tax.* Companies must file annual financial statements and profit tax returns with the tax inspectorate by the 1st day of the 10th month following the end of the tax year. They also must file two preliminary corporate tax advance payment returns. The first return covers the first nine months of the tax year and must be filed by the last day of the first month of the tax year. The second return covers the last 3 months of the tax year and must be filed by the last day of the 10th month of the tax year.

Companies must make quarterly advance payments of profit tax by the last day of the first three quarters and by the 25th day of the last quarter. Companies may calculate advance profit tax based on either of the following:

- The results of prior financial years. Under this base, the advance payments for the first three quarters of the tax year are each equal to one-quarter of the profit tax calculated for the tax year two years before the current tax year. For the 10th through 12th months of the tax year, the advance payments are each equal to one-quarter of the profit tax calculated for the preceding tax year.
- The forecasted profit tax of the current year. However, the total of the advance profit tax payments made during the tax year must total at least 80% of annual profit tax.

Newly registered enterprises in their first tax year and enterprises with taxable profit of less than LTL 100,000 in the preceding tax year are not required to make advance payments of profit tax.

Any balance of tax due for a tax year must be paid by the 1st day of the 10th month following the tax year. If the total of the advance payments exceeds the tax due for the tax year, a company may obtain a refund or apply the excess to future taxes. Taxes must be paid in litas.

*Withholding Taxes.* Withholding taxes together with returns for such taxes must be submitted to the tax inspectorate by the 15th day of the month following the month in which the taxes are withheld.

**Withholding Taxes.** A 10% withholding tax is imposed on the following types of payments to nonresident companies: interest on all types of debt; all types of royalties; payments for know-how;

payments with respect to the sale, rent or other transfer of real estate located in Lithuania; and compensation for violations of copyrights or ancillary rights. Dividends are generally subject to a 15% withholding tax (for an exception, see *Dividends* below).

**Dividends.** Dividends received from Lithuanian and foreign companies are subject to corporate profit tax at a rate of 15%. The 15% tax on dividends paid by Lithuanian companies is withheld at source.

For dividends paid by Lithuanian companies to other Lithuanian companies, profit tax for the preceding tax year is reduced by the withholding tax calculated on the dividends paid to Lithuanian companies and paid to the tax authorities. However, the amount of the reduction may not exceed the amount of profit tax for the preceding tax year. The amount of the withholding tax not set off in the first year may be carried forward for five years and set off against profit tax payable for those years. Payers of dividends must pay the withholding tax on the dividends to the tax authorities by the 10th day of the month following the month of payment of the dividends.

Lithuanian resident companies receiving dividends from foreign companies must pay the tax on the dividends to the tax authorities by the 10th day of the month following the month of receipt of the dividends.

Under the participation exemption, dividends paid by Lithuanian resident and foreign companies are not subject to profit tax if the recipient is a company (not located in a tax haven) that holds more than 10% of the shares of the payer of the dividends for a period of at least 12 months. The participation exemption also applies to the following:

- Dividends that are attributed to the permanent establishment of a foreign company in Lithuania; and
- Cash payments made to reduce the company's capital that was formed using the company's earnings.

**Foreign Tax Relief.** In general, a foreign tax credit may be claimed in an amount not exceeding the amount of Lithuanian profit tax payable on the foreign income. Special rules apply to particular types of income, unless a double tax treaty provides otherwise.

### C. Determination of Taxable Income

**General.** Taxable profit is equal to gross revenue, less expenses incurred in earning such revenue.

Certain items are not included in taxable profit, such as the following:

- Taxed dividends, and dividends not taxed as a result of the participation exemption (see Section B);
- Compensation received from Lithuanian insurance companies that does not exceed the amount of the loss incurred;
- Damages, fines and penalties received; and
- Gains on revaluation of assets and liabilities under certain circumstances.

Payments to tax havens are allowed as deductions only if the Lithuanian payer can prove that certain conditions, which confirm the economic substance of the transaction, are met.

The income and expenses of enterprises must be converted to litas using the official rate of the Bank of Lithuania (Lietuvos Bankas).

**Inventories.** Inventories must be valued at actual cost, which is calculated using the first-in, first-out (FIFO) method. On approval of the tax authorities, a taxpayer may apply the average cost or last-in, first-out (LIFO) method.

**Tax Depreciation.** Companies may select the straight-line depreciation method or the semi-annual depreciation method. To change the depreciation method, companies must obtain the approval of the local tax authority. Under the semi-annual depreciation method, assets purchased in the first half of the year are depreciated for a full year in the year of acquisition and are not depreciated in the year of retirement, while assets purchased in the second half of the year are not depreciated in the year of acquisition and are depreciated for a full year in the year of retirement. If the semi-annual depreciation method is chosen, additional accelerated depreciation (see below) may be applied, but only to certain assets, such as machinery and equipment, computer equipment and networks, new buildings and software.

The selected depreciation method must be applied for all assets of the same type and may not be changed. Under the straight-line method, depreciation is claimed each year in equal portions. To calculate accelerated depreciation, the net book value of long-term assets is depreciated each year by applying a rate that is double the normal depreciation rate. Under the production method, depreciation is calculated based on the number of units produced over the asset's useful life. The law sets the maximum depreciation rates. These rates determine the minimum number of years over which assets may be depreciated. The following are some of the minimum periods.

<b>Assets</b>	<b>Minimum Period for Depreciation (Years)</b>
Intangible assets	3 to 15
Buildings and premises	
Constructed or reconstructed on or after 1 January 2002	8
Constructed or reconstructed before 1 January 2002	15 to 20
Plant and machinery	5 to 15
Computers	3
Vehicles	4 to 10
Other assets	4

**Relief for Losses.** Tax losses from disposals of securities and derivative financial instruments may be carried forward for three years to offset gains derived from disposals of such items. Other tax losses may be carried forward for five years. Losses may not be carried back.

**Groups of Enterprises.** Corporations are taxed separately in Lithuania. Consolidated returns are not allowed.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; exports are zero-rated	5/9/18
Real estate tax, on the taxable value of real estate (the value is calculated by real estate registry institutions using methodology established by the government)	1
Social security tax; paid by Employer	30.9
Employee	3

Other significant taxes include excise duty, stamp duties, land and land lease tax, tax on the use of Lithuanian natural resources and pollution tax.

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Lithuanian currency is the litas (LTL).

If agreed to by the parties, foreign currency may be used for bank payments between business entities, and the euro may be used for both bank and cash payments. Commercial operations involving foreign currency, such as purchasing, selling and exchanging, may be performed only by banks that have obtained a license from the Bank of Lithuania.

**Transfer Pricing.** Entities operating in Lithuania whose turnover in Lithuania exceeded LTL 10,000,000 in the preceding calendar year are subject to the Lithuanian transfer-pricing rules. Under these rules, they must maintain supporting documentation establishing that all transactions with associated parties are carried out on an arm's length basis. Lithuanian transfer-pricing rules are based on the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Companies must file with the tax inspectorate a return reporting the transactions entered into with associated parties, together with their profit tax returns, if the total value of the transactions exceeds LTL 300,000.

**Controlled Foreign Companies.** Certain income of controlled entities located in countries or zones included in the special list approved by the Minister of Finance is added to taxable income of Lithuanian entities and taxed at the standard profit tax rate.

## F. Treaty Withholding Tax Rates

The table below lists the maximum withholding rates under Lithuania's tax treaties.

	Dividends %	Interest %	Royalties %
Armenia	5/15 (a)	10	10
Austria	5/15 (a)	10	5/10 (b)
Azerbaijan	5/10 (a)	10	10
Belarus	10	10	10
Belgium	5/15 (a)	10	5/10 (b)
Bulgaria	0/10 (c)	10	10
Canada	5/15 (a)	10	10
China	5/10 (a)	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Croatia	5/15 (d)	10	10
Czech Republic	5/15 (a)	10	10
Denmark	5/15 (a)	10	5/10 (b)
Estonia	5/15 (e)	10	10
Finland	5/15 (a)	10	5/10 (b)
France	5/15 (d)	10	5/10 (b)
Georgia	5/15 (f)	10	10
Germany	5/15 (a)	10	5/10 (b)
Greece	5/15 (a)	10	5/10 (b)
Hungary	5/15 (a)	10	5/10 (g)
Iceland	5/15 (a)	10	5/10 (b)
Ireland	5/15 (a)	10	5/10 (b)
Israel	5/10/15 (d)	10	5/10 (b)
Italy	5/15 (d)	10	5/10 (b)
Kazakhstan	5/15 (a)	10	10
Latvia	0/15 (h)	0	0
Luxembourg	5/15 (a)	10	5/10 (b)
Malta	5/15 (a)	10	10
Moldova	10	10	10
Netherlands	5/15 (a)	10	5/10 (b)
Norway	5/15 (a)	10	5/10 (b)
Poland	5/15 (a)	10	10
Portugal	10	10	10
Romania	10	10	10
Russian Federation	5/10 (i)	10	5/10 (b)
Singapore	5/10 (a)	10	7.5
Slovak Republic	10	10	10
Slovenia	5/15 (a)	10	10
Spain	5/15 (a)	10	5/10 (b)
Sweden	5/15 (a)	10	5/10 (b)
Switzerland	5/15 (e)	10	5/10 (b)
Turkey	10	10	5/10 (b)
Ukraine	5/15 (a)	10	10
United Kingdom	5/15 (a)	10	5/10 (b)
United States	5/15 (d)	10	5/10 (b)
Uzbekistan	10	10	10
Nontreaty countries	0/15 (j)	10	10

- (a) The 5% rate applies if the recipient owns more than 25% of the authorized capital of the payer.
- (b) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (c) The 0% rate applies if the recipient owns more than 10% of the authorized capital of the payer.
- (d) The 5% rate applies if the recipient owns at least 10% of the authorized capital of the payer.
- (e) The 5% rate applies if the recipient owns at least 20% of the authorized capital of the payer.
- (f) The 5% rate applies if the recipient owns more than 25% of the authorized capital of the payer and if the total value of the recipient's investment is at least US\$75,000.
- (g) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment or for transmission by satellite, cable, optic fiber or similar technology. The 10% rate applies to other royalties.
- (h) The 0% rate applies if the recipient owns more than 25% of the authorized capital of the payer.
- (i) The 5% rate applies if the recipient owns more than 25% of the authorized capital of the payer and if the total value of the recipient's investment is at least US\$10,000.
- (j) The 0% rate applies if the recipient holds more than 10% of the shares of the payer of the dividends for a period of at least 12 months.

# LUXEMBOURG

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**A. At a Glance**

Corporate Income Tax Rate (%)	22 (a)
Capital Gains Tax Rate (%)	22 (a)
Branch Tax Rate (%)	22 (a)

Withholding Tax (%)	
Dividends	15 (b)
Interest	0 (c)
Royalties	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) This is the maximum rate. In addition, a municipal business tax and an additional unemployment fund contribution (unemployment fund surcharge) are levied on income (see Section B).
- (b) The dividend withholding tax is imposed on payments to both residents and nonresidents. For nonresidents, this is a final tax. The rate may be reduced by a tax treaty. Also, see Section B for details concerning exceptions to the dividend withholding tax.
- (c) Interest payments may be subject to withholding tax in certain circumstances. For details, see Section B.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income. Companies whose registered office or principal place of management is in Luxembourg are considered resident companies.

Taxation in Luxembourg of foreign-source income is mitigated through several double tax treaties. In addition, if no tax treaty applies, a foreign tax credit is available under domestic law.

Nonresident corporations whose registered office and place of management are located outside Luxembourg are subject to corporate income tax only on their income derived from Luxembourg sources.

Companies that qualify as holding companies under the law of 31 July 1929 (1929 holding companies) are not subject to corporate income tax. The regime for these holding companies was amended, effective from 1 July 2005. Under the amended rules, companies that receive at least 5% of their dividend income from companies that are not fully subject to a tax comparable to Luxembourg corporate income tax lose their tax-exempt 1929 holding company status. Since July 2006, no new 1929 holding companies can be incorporated.

Existing 1929 holding companies can benefit from a grandfather rule until 31 December 2010, if certain conditions are met.

The Personal Investment Company (Société de Gestion de Patrimoine Familial, or SPF), a new private wealth management vehicle, is exempt from Luxembourg corporate income tax, municipal business tax and net worth tax.

**Tax Rates.** Corporate income tax rates range from 20% to 22%, depending on the income level. In addition, a surcharge of 4% is payable to the unemployment fund. A local income tax (municipal business tax) is also levied by the different municipalities. The rate varies depending on the municipality, with an average rate of 7.5%. The municipal business tax for Luxembourg City is 6.75% and the maximum effective overall tax rate for companies in Luxembourg City is 29.63%. The following is a sample 2008 tax calculation for a company in Luxembourg City.



Profit	€100.00
Corporate income tax at 22%	(22.00)
Unemployment fund surcharge at 4%	(0.88)
Municipal business tax	(6.75)
	<u>€70.37</u>
Total income taxes	<u>€29.63</u>
As percentage of profit	<u>29.63%</u>

In general, existing 1929 holding companies that benefit from the grandfather rule and SPFs are exempt from all income taxes (however, see *Corporate Income Tax* above). Dividends paid by these companies are not subject to withholding tax, and nonresident beneficiaries are not subject to income tax in Luxembourg on the dividend income. 1929 holding companies are subject to the subscription tax (*taxe d'abonnement*) levied at a rate of 0.2% on total net asset value (in practice, the capital and share premium). SPFs are also subject to the subscription tax at a rate of 0.25% on the total of the paid-up capital, the share premium and the amount of the debt exceeding eight times the sum of the paid-up capital and share premium as of 1 January. For SPFs, the subscription tax is capped at €125,000.

Investment funds organized in Luxembourg are only subject to the €1,250 registration duty on incorporation and to the subscription tax levied on total net asset value (for the rates of the subscription tax, see Section D). Distributions made by these funds are not subject to withholding tax.

Specialized Investment Funds (SIFs) are lightly regulated investment funds for “informed investors.” In this context, an “informed investor” is one of the following:

- An institutional investor;
- A professional investor; or
- Any other type of investor who has declared in writing that he is an informed investor, and either invests a minimum of €125,000 or has an appraisal from a bank, an investment firm or a management company (all of these with a European passport) certifying that he has the appropriate expertise, experience and knowledge to adequately understand the investment made in the fund.

SIFs are subject to significantly simplified rules for setting up fund structures such as hedge funds, real estate funds and private equity funds. Investment funds in the form of SIFs are not subject to any Luxembourg taxes on capital gains or income. They are subject only to a one-off capital duty of €1,250 and a subscription tax of 0.01% calculated on the quarterly net asset value of the fund. Funds already subject to the subscription tax, money market funds and certain types of pension funds are exempt from the subscription tax. Distributions by SIFs are not subject to withholding tax.

The venture capital company (*société d'investissement à capital à risque*, or SICAR) can be set up under a transparent tax regime as a limited partnership or under a non-transparent tax regime as a corporate company. The SICAR is approved and supervised by the Commission for the Supervision of the Financial Sector, but it

is subject to few restrictions. It has a flexible investment policy with no diversification rules or leverage restrictions. In addition, the SICAR is not liable for subscription tax or net worth tax.

Securitization vehicles can take the form of a regulated investment fund or a company (which, depending on its activities, may or may not be regulated). These vehicles are available for securitization transactions in the broadest sense and are not subject to capital duty or net worth tax. They are subject to corporate income tax and municipal business tax. However, obligations to investors (dividend and interest payments) are deductible from the tax base.

**Capital Gains.** The capital gains taxation rules described below apply to a fully taxable resident company.

Capital gains are generally regarded as ordinary business income and are taxed at the standard rates. Capital gains on the sale of shares, however, may be exempt from tax if all of the following conditions apply:

- The recipient is one of the following:
  - A resident capital company or a qualifying entity fully subject to tax in Luxembourg;
  - A Luxembourg permanent establishment of an entity that is resident in another European Union (EU) state and is covered by Article 2 of the European Community (EC) Parent-Subsidiary Directive; or
  - A Luxembourg permanent establishment of a capital company resident in a state with which Luxembourg has entered into a tax treaty.
- The shares have been held for 12 months or the shareholder commits itself to hold its remaining shares that fulfill the minimum shareholding requirement for an uninterrupted period of at least 12 months.
- The holding represents at least 10% of the capital of the subsidiary throughout that period, or the acquisition cost is at least €6 million.
- The subsidiary is a resident capital company or other qualifying entity fully subject to tax, a nonresident capital company fully subject to a tax comparable to Luxembourg corporate income tax or an entity resident in an EU member state that is covered by Article 2 of the EC Parent-Subsidiary Directive.

However, capital gains qualifying for the above exemption are taxable to the extent that related expenses deducted in the current year and in prior years exceed the dividends received. These related expenses include interest on loans used to finance the purchase of such shares and write-offs.

**Administration.** In general, the tax year coincides with the calendar year unless otherwise provided in the articles of incorporation. Tax returns must be filed before 31 May in the year following the fiscal year. The date may be extended on request by the taxpayer. Late filing is subject to a penalty of up to 10% of the tax due.

Taxes are payable within one month after receipt of the tax assessment notice. However, advance payments must be made quarterly by 10 March, 10 June, 10 September and 10 December for corporate income tax, and by 10 February, 10 May, 10 August and

10 November for municipal business tax and net worth tax. In general, every payment is equal to one-quarter of the tax assessed for the preceding year. If payments are not made within the designated time limit, an interest charge of 0.6% per month may be assessed.

A draft law that would introduce a self-assessment system is currently pending.

**Dividends.** Dividends received by resident companies are generally taxable. In addition, dividends received from resident taxable companies are fully exempt from corporate income tax if the following conditions are fulfilled:

- The recipient is one of the following:
  - A resident capital company or a qualifying entity fully subject to tax in Luxembourg;
  - A Luxembourg permanent establishment of an entity that is resident in another EU state and is covered by Article 2 of the EC Parent-Subsidiary Directive; or
  - A Luxembourg permanent establishment of a capital company resident in a state with which Luxembourg has entered into a tax treaty.
- The recipient owns at least 10% of the share capital of the distributing company or the acquisition cost of the shareholding is at least €1.2 million.
- The recipient holds the minimum participation in the distributing company for at least 12 months. The 12-month period does not need to be completed at the time of the distribution of the dividends if the recipient commits itself to eventually hold the participation for the required period.

Dividends received from nonresident companies are fully exempt from tax if the above conditions are satisfied and if either of the following applies:

- The distributing entity is a capital company subject to a tax comparable to Luxembourg corporate income tax; or
- The distributing entity is resident in another EU member state and is covered by Article 2 of the EC Parent-Subsidiary Directive.

The exemption for dividends also applies to dividends on participations held through qualifying fiscally transparent entities.

Expenses (for example, interest expenses or write-downs with respect to participations that generate exempt income) that are directly economically related to exempt income (for example, dividends) are deductible only to the extent that they exceed the amount of exempt income.

If the minimum holding period or the minimum shareholding required for the dividend exemption granted under Luxembourg domestic law is not met, the recipient can still benefit from an exemption for 50% of the dividends under certain conditions.

In addition, dividends received may be exempt under tax treaties.

On the distribution of dividends, 15% of the gross amount must be withheld at source unless one of the following conditions applies:

- The recipient holds directly, or through a qualifying fiscally transparent entity, for at least 12 months (the holding period requirement does not need to be completed at the time of the

distribution if the recipient commits itself to eventually hold the participation for the required 12-month period) at least 10% of the share capital of the payer, which must be a fully taxable resident capital company or other qualifying entity, or shares of the payer that had an acquisition cost of at least €1.2 million, and the recipient satisfies one of the following additional requirements:

- It is a fully taxable resident capital entity;
  - It is an entity resident in another EU member state and is covered by Article 2 of the EC Parent-Subsidiary Directive;
  - It is a capital company resident in Switzerland that is fully subject to tax in Switzerland without the possibility of being exempt;
  - It is a Luxembourg permanent establishment of an entity that is resident in another EU member state and that is covered by Article 2 of the EC Parent-Subsidiary Directive; or
  - It is a Luxembourg permanent establishment of a capital company resident in a state with which Luxembourg has entered into a tax treaty.
- A different rate is provided by a tax treaty.
  - The distributing company is a 1929 holding company benefiting from the grandfather rule, an investment fund, a SIF, a SPF, a SICAR or a securitization company.

**Interest.** Luxembourg has implemented the EU Savings Directive. Under the directive, effective from 1 July 2005, interest payments made by Luxembourg payers to beneficial owners who are individuals resident in other EU member states or to certain residual entities (as defined in the directive) are subject to withholding tax, unless the recipient elects that information regarding the interest payment be exchanged with the tax authorities of his or her state of residence. The withholding tax rate is 15% until 30 June 2008, 20% for the following three years and 35% thereafter.

Withholding tax at a rate of 10% is imposed on interest payments made by Luxembourg paying agents to individuals resident in Luxembourg. The withholding tax is final if the interest income is derived from assets held as part of the private wealth of the individual. Under a draft law, the 10% final tax would be extended to interest payments made by paying agents residing in other EU and EEA countries.

**Foreign Tax Relief.** A tax credit is available to Luxembourg resident companies for foreign-source income that has been subject to an equivalent income tax abroad. The maximum tax credit corresponds to the Luxembourg income tax that is payable on the net foreign-source income.

### C. Determination of Trading Income

**General.** The taxable income of corporations is based on the annual financial statements prepared in accordance with generally accepted accounting principles. Profits disclosed are adjusted for exempt profits, nondeductible expenses, special deductions and loss carryforwards.

Expenses incurred exclusively for the purposes of the business are deductible. Expenses incurred with respect to exempt income are disallowed (see Section B for a description of the tax treatment of expenses related to tax-exempt dividends).

**Inventories.** Inventory must be valued at the lower of acquisition (or production) cost or fair market value. The cost may be calculated either on the basis of weighted-average prices, first-in, first-out (FIFO), last-in, first-out (LIFO) or a similar method, provided the business situation justifies such a method. The method chosen should be applied consistently.

**Provisions.** Provisions for losses and uncertain liabilities may be deductible for tax purposes if they are based on objective facts and if the corresponding charge is deductible and economically connected to the relevant tax year.

**Tax Depreciation.** The straight-line depreciation method and the declining-balance method (except for buildings) are allowed.

Commercial buildings are depreciated at straight-line rates ranging from 1.5% to 4%. The straight-line rate for industrial buildings is 4%. Land may not be depreciated.

The depreciation rates under both the declining-balance method and straight-line method are 10% for plant and machinery, 20% for office equipment and 25% for motor vehicles.

Depreciable assets with a useful life of one year or less and those with a value not exceeding €870 may be deducted in full from business income in the year of acquisition.

**Investment Tax Credit.** A tax credit of 10% is granted for additional investments in depreciable tangible fixed assets other than buildings and motor vehicles, if they have a useful life of at least three years. In addition, a 6% credit is granted for qualifying new investments up to €150,000 and a 2% credit is granted for investments over that amount. For investments in ecological equipment and projects, these rates are increased to 8% and 4%, respectively. Investments may qualify for both credits. The credits reduce corporate income tax. Unused credits may be carried forward for 10 years.

**Relief for Losses.** Trading losses, adjusted for tax purposes, incurred in or after 1991 may be carried forward without a time limitation. A carryback of losses is not allowed.

**Groups of Companies.** A Luxembourg company and its wholly owned (at least 95% of the capital, which may be reduced to 75% in exceptional situations) Luxembourg subsidiaries may form a “fiscal unity.” The fiscal unity allows the affiliated subsidiaries to combine their respective tax results with the tax result of the parent company of the consolidated group. To qualify for tax consolidation, both the parent and its wholly owned subsidiaries must be resident capital companies that are fully subject to tax. A permanent establishment of a nonresident capital company fully subject to a tax comparable to Luxembourg corporate income tax also qualifies as a parent company of the group. The tax consolidation rules also allow consolidation between a Luxembourg parent company and its indirectly held Luxembourg subsidiary through a nonresident qualifying company.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on the supply of goods and services within Luxembourg and on the import of goods and services into Luxembourg	
General rate	15
Other rates	3/6/12
Net worth tax, on net asset value as of 1 January, reduced by the value of substantial participations (at least 10% of the capital of qualifying domestic or foreign subsidiaries) that are held directly or through a qualifying fiscally transparent entity	0.5
Capital duty; levied on initial capital and any subsequent increases in capital (The rate of capital duty is likely to be reduced to 0.5%, effective from 1 January 2008, and abolished, effective from 1 January 2008.)	1
Subscription tax ( <i>taxe d'abonnement</i> ), annual tax on the value of a company's shares; rate depends on type of company	
SPFs	0.25
Financial holding companies	0.2
Investment funds	
Funds of funds	0
SIFs, dedicated funds (funds owned exclusively by institutional investors), institutional compartments of funds, monetary funds and cash funds	0.01
Other funds	0.05
Social security contributions on salaries (2008 rates); paid by	
Employer (including health at work contribution)	
For blue-collar workers	13.16
For white-collar workers	10.91
Employees	
Blue-collar workers	13.05
White-collar workers	10.80
Payroll taxes, for accident insurance, paid by employer; rate varies depending on activities of employees (2008 rates)	0.44 to 6
Health at work contribution, on salaries; paid by employer (2008 rate)	0.11
Care insurance on gross employment income (2008 rate)	1.4

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The Banque Centrale de Luxembourg (BCL) and the Service Central de la Statistique et des Etudes économiques (STATEC) monitor the transfers of funds over a certain amount entering or leaving the country through regular inquiries. However, such inquiries do not constitute transfer restrictions and merely serve as formal requirements.

**Debt-to-Equity Rules.** The Luxembourg tax law does not contain any specific thin-capitalization rules. In principle, borrowed money necessary for financing an operation is not limited to a percentage of paid-in capital. However, based on the abuse of law

doctrine, the authorities tend to challenge debt-to-equity ratios of companies engaged in holding activities that are greater than 85:15. Under the abuse of law doctrine, the tax authorities may challenge fictitious or abnormal transactions and schemes that are entered into for the sole purpose of avoiding taxes.

**Antiavoidance Legislation.** No specific antiavoidance rules are contained in the law. However, the tax authorities can substitute an arm's length price if transactions with a related party are entered into at an artificial price or if transactions are entered into in an abnormal manner and are solely tax-motivated.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under Luxembourg domestic tax law.

	Dividends %	Interest (m) %	Royalties %
Austria	0/5/15 (a)(d)	0	0
Belgium	0/10/15 (c)(d)	0	0
Brazil	15/25 (g)	0	0
Bulgaria	0/5/15 (a)(d)	0	0
Canada	0/5/15 (h)	0	0
China	5/10 (a)	0	0
Czechoslovakia (e)	0/5/15 (a)(d)	0	0
Denmark	0/5/15 (a)(d)	0	0
Estonia (o)	0/5/15 (a)(d)	0	0
Finland	0/5/15 (a)(d)	0	0
France	0/5/15 (a)(d)	0	0
Germany	0/10/15 (a)(d)	0	0
Greece	0/7.5 (d)	0	0
Hungary	0/5/15 (a)(d)	0	0
Iceland	5/15 (a)	0	0
Indonesia	10/15 (a)	0	0
Ireland	0/5/15 (a)(d)	0	0
Israel	5/10/15 (a)	0	0
Italy	0/15 (d)	0	0
Japan	5/15 (a)	0	0
Korea	10/15 (a)	0	0
Latvia (n)	0/5/10 (a)(d)	0	0
Lithuania (n)	0/5/15 (a)(d)	0	0
Malaysia	5/10 (g)	0	0
Malta	0/5/15 (a)(d)	0	0
Mauritius	5/10 (g)	0	0
Mexico	5/15 (g)	0	0
Mongolia	0/5/15 (k)	0	0
Morocco	10/15 (a)	0	0
Netherlands	0/2.5/15 (a)(d)	0	0
Norway	5/15 (a)	0	0
Poland	0/5/15 (a)(d)	0	0
Portugal	0/15 (d)	0	0
Romania	0/5/15 (a)(d)	0	0
Russian Federation	10/15 (j)	0	0
San Marino (n)	0/15 (l)	0	0
Singapore	5/10 (g)	0	0
Slovenia	0/5/15 (a)(d)	0	0
South Africa	5/15 (a)	0	0
Spain	0/5/15 (a)(d)	0	0

	<b>Dividends</b>	<b>Interest (m)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Sweden	0/15 (d)(g)	0	0
Switzerland	0/5/15 (f)	0	0
Thailand	5/15 (a)	0	0
Trinidad and Tobago	5/10 (g)	0	0
Tunisia	10	0	0
Turkey	5/15 (a)	0	0
United Kingdom	0/5/15 (a)(d)	0	0
United States	0/5/15 (b)	0	0
Uzbekistan	5/15 (a)	0	0
Vietnam	5/10/15 (i)	0	0
Nontreaty countries	0/15 (d)	0	0

- (a) The 5% rate (Netherlands, 2.5%; Belgium, Germany, Indonesia, Korea, and Morocco, 10%) applies if the recipient company holds at least 25% (Israel, 10%) of the payer of the dividends.
- (b) The 0% rate applies if the recipient of the dividends is a company that, on the date of payment of the dividends, has owned directly at least 25% of the voting shares of the payer for an uninterrupted period of at least two years and if such dividends are derived from an industrial or commercial activity effectively operated in Luxembourg. The 5% rate applies if the recipient of the dividends is a company that owns directly at least 10% of the voting shares of the payer. The 15% rate applies to other dividends.
- (c) The 10% rate applies if, from the beginning of the accounting year in which the recipient company receives the dividends, it owns at least 25% of the payer's share capital or if the price paid by the recipient company for its direct holding was at least €6,197,338.
- (d) Under an EU directive, withholding tax is not imposed on dividends distributed to a parent company resident in another EU state if the recipient of the dividends holds directly at least 10% of the payer or shares in the payer that it acquired for a price of at least €1.2 million for at least one year. This holding period does not need to be completed at the time of the distribution if the recipient commits itself to eventually holding the participation for the required period.
- (e) Luxembourg honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (f) The 0% rate applies if, at the time of the distribution, the recipient has held at least 25% of the share capital of the payer for an uninterrupted period of at least two years. The 5% rate applies if the recipient owns at least 25% of the share capital of the payer. The 15% rate applies to other dividends.
- (g) The lower rate applies if the recipient company holds at least 10% of the payer.
- (h) The 0% rate applies if all of the following conditions are satisfied: at the date of distribution of the dividends, the Canadian beneficial owner of the dividends has held a direct shareholding of at least 25% for an uninterrupted period of at least two years; the dividends are derived from an industrial or commercial activity effectively operated in Luxembourg; and the dividends are exempt in Canada. The 5% rate applies if the beneficial owner owns at least 10% of the voting power of the payer of the dividends. The 15% rate applies to other dividends.
- (i) The 5% rate applies if the beneficial owner of the dividends is a company that meets either of the following conditions: it holds directly or indirectly at least 50% of the capital of the payer; or it has invested in the payer more than US\$10 million or the equivalent in Luxembourg or Vietnamese currency. The 10% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 25%, but less than 50%, of the capital of the payer and if such beneficial owner's investment in the payer does not exceed US\$10 million or the equivalent in Luxembourg or Vietnamese currency. The 15% rate applies to other dividends.
- (j) The lower rate applies if the recipient company holds at least 30% of the payer or if the value of its investment in the payer is at least ECU 75,000 or its equivalent in other currencies.
- (k) The 0% rate applies if the recipient company holds at least 25% of the payer for a continuous period of 12 months preceding the date of the dividend. The 5% rate applies if the recipient company holds at least 10% of the payer of the dividends. The 15% rate applies to other dividends.



- (l) The 0% rate applies if the recipient company holds at least 10% of the payer for a continuous period of 12 months preceding the date of the dividend. The 15% rate applies to other dividends.
- (m) Interest payments may be subject to withholding tax in certain circumstances. For details, see Section B.
- (n) This treaty is effective from 1 January 2007.
- (o) This treaty is effective from 1 January 2008.

Luxembourg has ratified a tax treaty with Ukraine.

Luxembourg has signed tax treaties with Azerbaijan, Hong Kong, Moldova and the United Arab Emirates.

Tax treaty negotiations with Bahrain, Cyprus, Georgia, India, Kazakhstan, Kuwait, Lebanon, Qatar, Serbia and Montenegro and the United Kingdom have been announced or are underway.

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## A. At a Glance

Corporate Income Tax Rate (%)	9 to 12 (a)
Capital Gains Tax Rate (%)	9 to 12 (a)(b)
Branch Tax Rate (%)	9 to 12 (a)
Withholding Tax (%) (c)	
Dividends	0
Interest	0
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) Complementary tax is imposed on income at progressive rates ranging from 9% to 12%. See Section B.
- (b) For details regarding the taxation of capital gains, see Section B.
- (c) Macau law does not contain any specific measures imposing withholding taxes.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies and individuals carrying on commercial or industrial activities in Macau are subject to complementary tax on their income derived from Macau. No distinction is made between residents and nonresidents for tax purposes.

**Rates of Corporate Income Tax.** The same complementary tax rates apply to companies and individuals. Taxable profits over MOP 200,000 are taxed at progressive rates ranging from 9% to 12%. The following are the complementary tax rates.

Taxable Profits		Tax on Lower Amount MOP	Rate on Excess %
Exceeding MOP	Not Exceeding MOP		
0	200,000	0	0
200,000	300,000	0	9
300,000	–	9,000	12

**Offshore Companies.** Macau Offshore Companies (MOCs) are exempt from Macau taxes. A company qualifies as an MOC if it is established under Macau's offshore law and if it meets certain criteria. In general, MOCs must use non-Macau currencies in its activities, target only non-Macau residents as customers and concentrate only on non-Macau markets. MOCs may engage only in the eight categories of services contained in a list published by the government.

**Capital Gains.** A capital gains tax is not imposed in Macau. However, companies carrying on commercial or industrial activities in Macau are subject to complementary tax on their capital gains derived in Macau.

**Administration.** The tax year is the calendar year.

For tax purposes, companies are divided into Groups A and B. These groups are described below.

*Group A.* Group A companies are companies with capital of over MOP 1 million (US\$125,000) or average annual taxable profits over the preceding three years of more than MOP 500,000 (US\$62,500). Other companies maintaining appropriate accounting books and records may also elect to be assessed in this category by filing an application with the Macau Finance Department before the end of the tax year.

Income of Group A companies is assessed based on their financial accounts submitted for tax purposes. These companies are required to file between April and June of each year complementary tax returns together with detailed financial accounts with respect to the preceding year. The tax returns must be certified by local accountants or auditors registered with the Macau Finance Department.

Group A companies may carry forward losses to offset taxable profits in the following three years.

*Group B.* Group B companies are companies that do not meet the capital or average annual taxable profits thresholds for Group A companies and do not elect to be assessed in the Group A category.

For Group B companies, tax is levied on a deemed profit basis. Financial information in tax returns submitted by Group B companies normally serves only as a reference for tax assessment. Group B companies are normally deemed to earn profits for each year of assessment, regardless of whether the taxpayers have earned no income or incurred losses for the year.

Group B companies are required to file annual tax return forms together with summary profit-and-loss accounts for the preceding year between February and March. Certification of the tax return forms by registered accountants or auditors is not required.

Group B companies may not carry forward tax losses.

**Dividends.** Dividends are normally paid out of after-tax profits. Consequently, no tax is imposed on dividends.

Group A companies (see *Administration* above) may claim dividends paid as an expense in the year of payment. If dividends are claimed as an expense, the recipients of the dividends are subject to complementary tax on the dividends.

**Foreign Tax Relief.** Macau does not grant relief for foreign taxes paid.

### C. Determination of Trading Income

**General.** As discussed in Section B, companies are divided for tax purposes into Groups A and B. For Group A companies, taxable profits are based on the profits shown in the financial statements, subject to adjustments required by the tax law. Group B companies are taxed on a deemed profit basis.

All expenses wholly and exclusively incurred in the production of taxable profits are deductible for complementary tax purposes.

**Inventories.** Inventories are valued using the historical cost or first-in, first-out (FIFO) methods.

**Provisions.** The following are the rules for the tax-deductibility of provisions in Macau:

- Provision for bad debts: deductible up to 2% of trade debtor's year-end balance;
- Provision for inventory loss: deductible up to 3% of the value of the closing inventory at the end of the year;
- Provision for taxes: not deductible; and
- Other provisions: subject to approval by the tax authorities.

**Tax Depreciation.** Tax depreciation allowances are granted for capital expenditure incurred in producing taxable profits. These allowances are calculated based on the actual cost of purchase or construction, or, if the amount of the cost is not available, the book value accepted by the Macau Finance Department. The following are the applicable straight-line depreciation rates in Macau.

<b>Asset</b>	<b>Rate (%)</b>
Industrial buildings (including hotels)	
First year	20
Subsequent years	4
Commercial and residential buildings	
First year	20
Subsequent years	2
Central air-conditioning plant	14.29
Central telecommunication, telephone and telex systems	10
Elevators and escalators	10
Vessels, dredgers and floating cranes	10

<b>Asset</b>	<b>Rate (%)</b>
Transport equipment	
Light vehicles	20
Heavy vehicles	16.66
Furniture	
Office	20
Residential	16.66
Computers, minicomputers and word processors	25
Other office equipment	20
Nonelectronic equipment and machinery	14.29
Electronic equipment and machinery	20
Computer software	33.33
Molds	33.33

Intangible assets, such as patents, may be amortized at an annual rate of 10%. Organizational expenses, fixtures with a life of at least one year and major repairs may be written off at an annual rate of 33.33%.

**Relief for Losses.** Group A companies (see Section B) may carry forward losses for three years. Loss carrybacks are not allowed.

**Groups of Companies.** Macau does not allow consolidated returns or provide other relief for groups of companies.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Property tax, levied annually on owners of real property in Macau; the tax is applied to the actual rental income for leased property and to the deemed rental value for other property as determined by the Macau Finance Department; up to 10% of the rent or rental value may be deducted to cover repairs and maintenance, and other expenses related to the property; certain buildings are exempt including industrial buildings occupied by their owners for industrial purposes, new residential or commercial buildings for the first 6 years on the islands of Coloane and Taipa and for the first 4 years in other parts of Macau, and new industrial buildings for the first 10 years on Coloane and Taipa and for the first 5 years in other parts of Macau	
Rental property	16%
Other property	10%
Stamp duty, on selling price or assessable value of transferred property; payable by purchaser	3%
Excise tax, on imported value and/or volume of certain items, such as beer, wine, spirits, and tobacco	
Beer, wine and spirits	
On imported value	10% to 15%

<b>Nature of Tax</b>	<b>Rate</b>
On volume	MOP 1 to MOP 20 per liter
Tobacco	
Cigarettes	MOP 0.05 per cigarette
Other tobacco	MOP 20 to MOP 70 per kilogram
Vehicles tax, on tax value of vehicles (including motorcycles) determined by the relevant authorities	10% to 55%
Social security contributions; payable monthly by	
Employer for	
Resident employees	MOP 30
Nonresident employees	MOP 45
Employee (residents only)	MOP 15
Tourism tax, on the invoice amount for services provided in the tourist trade, such as hotels	5%

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The currency in Macau is the pataca (MOP). Since 1977, the pataca has been closely aligned with the Hong Kong dollar (HK\$), moving within a narrow band around an exchange rate of MOP 103 to HK\$100. Because the Hong Kong dollar is officially pegged to the U.S. dollar, the value of the pataca is closely associated with the value of the U.S. dollar. The current exchange rate is approximately MOP 8:US\$1.

Macau does not impose foreign-exchange controls.

**Debt-to-Equity Rules.** Except for the banking and financial services sector, no statutory debt-to-equity requirements or capitalization rules are imposed in Macau.

## **F. Tax Treaties**

Macau has entered into a tax treaty with Portugal. Macau has also signed tax treaties with Belgium and Mozambique, but these treaties have not yet taken effect.

Macau has also entered into an arrangement with Mainland China for the avoidance of double taxation and the prevention of fiscal evasion with respect to income.

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## **MACEDONIA, FORMER YUGOSLAV REPUBLIC OF**

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*Macedonia, which was a republic of the former Yugoslavia, gained its independence in 1991. It was admitted to the United Nations in 1993 as the "Former Yugoslav Republic of Macedonia." Because of the rapidly changing economic situation in Macedonia, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10
Withholding Tax (%)	
Dividends	10
Interest	10
Royalties from Patents, Know-how, etc.	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies resident in the Former Yugoslav Republic of Macedonia (RM) that perform registered activities (activities described in the documents submitted to the court with respect to the registration of companies) are subject to corporate income tax on their worldwide income. A company is resident in Macedonia if it is incorporated in Macedonia and if its head office is located in Macedonia. A foreign company is considered to be resident in the RM if it establishes a branch office in the RM. Nonresident companies are subject to tax on their income derived from performing activities in the RM.

**Rate of Corporate Income Tax.** The corporate income tax rate is 10%.

**Tax Incentives.** Tax incentives available in the RM are described below.

*Deduction for Reinvested Profits.* Companies may claim a deduction from taxable income for the amount of profits reinvested in the RM. Profits are considered to be reinvested if they are allocated to the company's equity with the intention of using such profits to purchase tangible and intangible fixed assets in a year subsequent to the year in which the profits are generated. Such tangible and intangible assets may not be sold or otherwise disposed of within the three-year period beginning with the year in which the investment is made. If this condition is not satisfied, the company must pay the tax saved plus interest for the late payment of tax. Depreciation charges for assets qualifying for the deduction described above may not be claimed as expenses for corporate income tax purposes.

*Free-Economic Zone.* Companies are exempt from income tax for the first 10 years of its activities in a free-economic zone, subject to the conditions and procedures established in the Law on Free Economic Zone.

**Capital Gains and Losses.** Capital gains are included in taxable income and are subject to tax at the regular corporate income tax rate of 12%. Seventy percent of capital gains is included in taxable income and is subject to tax at the regular corporate income tax rate of 10%.

Capital losses resulting from sales of securities may offset capital gains derived from such sales in the same year or carried forward to offset capital gains from such sales in the following three years.

**Administration.** The tax year is the calendar year.

Companies must make advance monthly payments of corporate income tax by the 15th day of the month following the month for which tax is due. For newly established companies, this rule applies after they file their first annual tax return. The monthly advance payment is calculated in accordance with rules contained in the law. Companies must file annual tax returns. If the tax determined in an annual tax return is less than the amount of advance tax paid, a company must pay the difference within 30 days after the due date for filing the return.

**Withholding Tax.** Subject to applicable double tax treaties, withholding tax is imposed on dividends, interest, royalties and certain other payments to nonresidents. A 10% withholding tax is imposed on the following payments to nonresident entities without a permanent establishment in the RM:

- Dividends;
- Interest;
- Royalties paid by a resident or by a nonresident with a permanent establishment in the RM that can claim the royalties as deductible expenses of the permanent establishment;
- Payments of income arising from entertainment or sporting activities carried out in the RM;
- Payments of income arising from the performance of management, consulting, financial, technical, administrative, research and development services, intermediation and other similar services if the income is paid by a resident or by a permanent establishment in the RM that can claim the amounts paid as deductible expenses;
- Rent for immovable and movable property in the RM;
- Prizes awarded at contests in the RM, other than those awarded to pupils or students, to the extent that the prize received for a single contest exceeds the equivalent in Macedonian denars of €500;
- Insurance premiums for the insuring or reinsuring of risks located in the RM; and
- Payments of income arising from telecommunication services between the RM and a foreign state.

For dividends, interest, royalties and other income paid to nonresident individuals, the domestic withholding tax rate is 10%. For payments made to residents of treaty countries, the treaty rates may apply.

The following types of payments are not subject to withholding tax in the RM:

- Repatriation of after-tax profits paid by Macedonian branches of nonresident companies;

- Interest from debt instruments issued or guaranteed by the government of the RM, the National Bank of the RM or banks or other financial institutions acting as an agent of the government of the RM;
- Interest on deposits in banks located in the RM; and
- Payments of income arising from intermediary or consulting services with respect to state securities on the international financial market.

**Dividends.** Dividends paid to nonresident entities without a permanent establishment in the RM and to nonresident individuals are subject to withholding tax. Subject to applicable tax treaties, the withholding tax rate is 10% for dividends paid to nonresidents.

If the Macedonian payer of dividends pays tax on income out of which the dividends are paid, the recipient of the dividends may deduct the dividends from taxable income. If a nonresident payer of a dividend pays tax on such income, the recipient of the dividend may deduct the dividend up to the amount calculated by applying the Macedonian corporate income tax rate of 10% to the amount of the dividend.

**Foreign Tax Relief.** Resident companies may claim a tax credit for foreign income tax paid, but the amount of the credit may not exceed the 10% income tax imposed in the RM on the foreign-source income.

### C. Determination of Trading Income

**General.** Taxable income is the income reported in the companies' financial statements, subject to certain adjustments as required by law.

**Inventories.** Inventories are valued at cost, but the value for tax purposes may not exceed the sales value on the date when taxable income is determined.

**Provisions.** Provisions for bad debts are not allowed for corporate income tax purposes.

**Tax Depreciation.** In general, assets may be depreciated using the straight-line method. The book of rules for the calculation of depreciation specifies the following maximum depreciation rates for major categories of assets, which may be used for tax purposes.

Assets	Rate (%)
Buildings and structures	2.5 to 10
Plant and equipment	5 to 25
Motor vehicles	25
Orchards and vineyards	10
Cattle, birds and chickens	20
Intangible assets	20
Other assets	10

The above rates may be increased by 10% for tax purposes (for example, the 10% rate may be increased to 11%).

If a company determines the useful life of a depreciable asset according to the actual output expected to be derived from the use of the asset and if the depreciation rate in such a case exceeds 10% of the prescribed rate, approval of the Internal Revenue Administration must be obtained.



Depreciation expenses calculated with respect to fixed assets qualifying for the reinvested profits incentive may not be deducted for tax purposes.

**Relief for Losses.** Losses may be carried forward three years. Losses may not be carried back.

**Groups of Companies.** On application, the Public Revenue Office may approve tax consolidation for resident companies if a resident company owns, directly or indirectly, at least 90% of the shares of other resident companies. An approved tax consolidation applies for a minimum of five years.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax; imposed on goods sold and services rendered in the RM, on sales of real property in the RM and on imports; certain items are exempt, such as banking, insurance and other financial activities	
Standard rate	18%
Reduced rate (for food products for human use, drinking water from public water supply systems, books, brochures and newspapers, certain materials and fixed assets for agriculture, drugs and medicine products for human use, computers, printers and accessories, software, equipment that is used for the production of solar electricity and passenger transport)	5%
Exports	0%
Excise tax on sales in the RM and on imports of various items; tax is imposed at ad valorem rates, which are applied to the sales or import price, or at specific rates, which are expressed in Macedonian denars per unit of goods; for petrol, Diesel D-1 and gas, the rates are subject to change every two weeks	
Petrol	MKD 21.879 to MKD 24.853 per liter
Diesel D-1 (petrol for use in motor cars)	MKD 12.305 per liter
Heating oil	MKD 3.173 per liter
Fuel oil	MKD 0.10 per kilogram
Alcoholic beverages	MKD 300 per liter of pure alcohol
Beer	MKD 3 per percentage of alcohol in a liter
Cigars and cigarillos	MKD 1.35 per piece
Cigarettes	MKD 0.10 per piece plus 35% of the retail price
Other tobacco products	MKD 1,350 per kilogram

<b>Nature of Tax</b>	<b>Rate</b>
Taxes contained in Property Tax Law	
Property tax; annual tax on owners of immovable property, including nonarable land, residential buildings or apartments, industrial, business and administrative buildings, and garages and other structures; tax base is the market value of the real estate or movable property; tax return must be filed by 31 January (only if changes have occurred since the previous period)	0.1% to 0.2%
Tax on sales and other transfers of real estate and rights to real estate; tax base is the market value of the real estate or right at the time of the sale; for exchanges, the tax base is the difference between the market values of the items being exchanged; tax payable by transferor	2% to 4%
Inheritance and endowment tax, on the inheritance or endowment of real estate or rights to real estate; tax applies regardless of whether inheritance or endowment is granted in a will or is acquired under the inheritance law or under an endowment agreement; tax base is the market value of the inheritance and endowment, reduced by debts and expenses; tax is paid by resident and nonresident recipients, including companies	
Individuals in first line of heritage	0%
Individuals in second line of heritage	2% to 3%
All others	4% to 5%
Payroll contributions; paid by employers for all employees, with certain exceptions; imposed on wages paid to employees	
Pension fund	21.2%
Health fund	9.2%
Additional contribution for health fund	0.5%
Employment	1.6%
Contribution for water resources	0.2%
Republic Chamber of Commerce (not mandatory)	0.12%
Skopje Chamber of Commerce; payable only by companies located in Skopje (not mandatory)	0.07%

## **E. Foreign-Exchange Controls**

The currency in the RM is the denar (MKD). All transactions in the RM must be made in denars.

The National Bank of the Republic of Macedonia, which is the central bank, is exempt from income tax.

Residents and nonresidents may maintain foreign-currency accounts at commercial banks.

Registration with the central bank is required for the following transactions: obtaining or granting loans; paying or receiving cash; or opening bank accounts abroad.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Albania	10	10	10
Belarus	5/15 (a)	10	10
Bulgaria	5/15 (a)	0/10 (b)	10
China	5	0/10 (c)	0/10 (d)
Croatia	5/15 (a)	0/10 (e)	10
Czech Republic	5/15 (a)	0	10
Denmark	0/5/15 (f)	0	10
Egypt	10	10	10
Finland	0/15 (g)	0/10 (h)	0
France	0/15 (l)	0	0
Germany	5/15 (q)	0/5 (r)	5
Hungary	5/15 (a)	0	0
Iran	10	10	10
Italy	5/15 (a)	0/10 (j)	0
Latvia	5/10 (q)	0/5 (t)	10
Moldova	5/10 (q)	5	10
Netherlands	0/15 (i)	0	0
Poland	5/15 (a)	0/10 (k)	10
Romania	5	0/10 (l)	10
Russian Federation	10	10	10
Serbia and Montenegro	5/15 (a)	10	10
Slovenia	5/15 (a)	10	10
Spain	5/15 (l)	0/10 (p)	10
Sweden	0/15 (a)	0/10 (m)	0
Switzerland	5/15 (a)	0/10 (n)	0
Turkey	5/10 (a)	0/10 (o)	10
Ukraine	5/15 (a)	0/10 (e)	10
United Kingdom	5/15 (q)	0/10 (s)	0
Nontreaty countries	10	10	10

- (a) The lower rate applies if the recipient of the dividend is a company (other than a partnership) that holds at least 25% of the equity of the payer of the dividends.
- (b) The 0% rate applies if the beneficial owner of the interest is the government or the central bank.
- (c) The 0% rate applies if the beneficial owner of the interest is the government, municipalities, the central bank or other financial institutions fully owned by the government or municipalities.
- (d) The 0% rate applies if the beneficial owner of the royalties is the government, municipalities, the central bank or other financial institutions fully owned by the government or municipalities.
- (e) The 0% rate applies if the beneficial owner of the interest is the government, municipalities, the central bank, other financial institutions fully owned by the government or municipalities, or other legal entities that are directly financed by the government, the central bank or municipalities.
- (f) The 0% rate applies if the beneficial owner of the dividends is a pension fund or other similar institution providing pension schemes in which individuals may participate to secure retirement benefits. The 5% rate applies if the recipient of the dividend is a company (other than a partnership) that holds at least 25% of the equity of the payer of the dividends.
- (g) The 0% rate applies if the recipient of the dividend is a company (other than a partnership) that holds at least 10% of the voting power of the payer of the dividends.
- (h) The 0% rate applies if the beneficial owner of the interest is the State of Finland, Bank of Finland, Finnish Fund for Industrial Co-operation or if the interest is from loans supported by the government of Finland.

- (i) The 0% rate applies if the recipient of the dividend is a company (other than a partnership) that holds at least 10% of the equity of the payer of the dividends.
- (j) The 0% rate applies if the beneficial owner of the interest is the government, municipalities or their fully owned entities or if the interest payments arise from loans of other agencies or instrumentalities (including financial institutions) based on agreements between the governments.
- (k) The 0% rate applies if the beneficial owner of the interest is the government including municipalities, the central bank and financial institutions controlled by the government or if the interest is derived from loans guaranteed by the government.
- (l) The lower rate applies if the beneficial owner of the interest is the government including municipalities, agencies or banks of the government or municipalities or if the interest is derived from loans warranted, insured or financed by the government.
- (m) The 0% rate applies if any of the following circumstances exist:
  - The beneficial owner of the interest is the state, a statutory body or the central bank;
  - The interest is paid on loans approved by the government of the country of the interest payer;
  - The interest is paid on loans granted by the Swedish International Development Authority, Swedfund International AB or the Swedish Export Credits Guarantee Board; or
  - The interest is paid on bank loans.
- (n) The 0% rate applies if the beneficial owner obtained the interest with respect to sales on credit of industrial, commercial or scientific equipment or with respect to sales on credit of merchandise between enterprises or if the interest is paid on bank loans.
- (o) The 0% rate applies if the beneficial owner of the interest is the government, municipalities or the central bank.
- (p) The 0% rate applies if the beneficial owner obtained the interest with respect to sales on credit of industrial, commercial or scientific equipment or with respect to sales on credit of merchandise between enterprises or if the interest is paid on long-term bank loans (over five years).
- (q) The lower rate applies if the recipient of the dividend is a company (other than a partnership) that holds at least 10% of the equity of the payer of the dividends.
- (r) The 0% rate applies to interest arising in Macedonia and paid in consideration of a loan guaranteed by the Federal Republic of Germany, the Deutsche Bundesbank, Credit Bank for Reconstruction or the German association for investment and development. The 0% rate also applies to interest paid with respect to the sale of commercial or scientific equipment and the sale on credit of merchandise between enterprises.
- (s) The 0% rate applies to interest paid with respect to a loan granted or credit extended by an enterprise to another enterprise and to interest paid to political subdivisions, local authorities or public entities.
- (t) The 0% rate applies to interest paid with respect to a loan granted or credit extended for the sale of industrial, commercial or scientific equipment (unless the sale or loan is between related persons), and to interest paid to the government including local authorities, the central bank and financial institutions wholly owned by the government.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	25 (b)
Other Nonsalary Payments	25 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The minimum tax is MGA 100,000 plus 0.5% of turnover.  
 (b) This withholding tax applies to resident and nonresident companies and individuals. It is a final tax.  
 (c) This withholding tax applies to resident and nonresident companies and individuals. It is a final tax for nonresidents only.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies and nonresident companies deriving taxable income from activities carried out in Madagascar are subject to corporate income tax. Resident companies are companies incorporated in Madagascar.

In general, only Malagasy-source income is subject to tax.

**Rates of Tax.** The standard corporate income tax rate is 25%.

In general, the minimum tax is MGA 100,000 plus 0.5% of turnover (excluding capital gains) for companies carrying on the following activities: agricultural; artisanal; mining; industrial; tourism; or transporting. For companies engaged in other activities, the minimum tax is MGA 320,000 plus 0.5% of turnover. The minimum tax applies if it exceeds the corporate income tax calculated using the 25% rate or if the company incurs a loss.

Export companies established in Malagasy free zones are exempt from corporate income tax for the first five years of their activities and are subject to corporate income tax at a rate of 10% for subsequent years.

**Capital Gains.** Capital gains on fixed assets and shares are taxed at the standard corporate income tax rate of 25%.

**Administration.** Companies must file financial statements with the Malagasy tax administration for the district of the location of their company headquarters before 15 May of the year following the tax year.

Companies must make six advance payments of tax. Each payment must be equal to one-sixth of the preceding year's tax.

**Dividends.** A 25% withholding tax is imposed on dividends paid to resident and nonresident companies and individuals. The dividend withholding tax is a final tax for residents and nonresidents.

For dividends distributed by free-zone companies, the tax rate is 10%.

**C. Determination of Trading Income**

**General.** Taxable income is based on financial statements prepared according to Plan Comptable Général (PCG) 2005, which

conforms to the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS).

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Interest paid on shareholder loans in excess of the interest rate determined for the interest applicant by the central bank plus two percentage points on an amount not exceeding two times the authorized capital. None of the interest on shareholder loans is deductible if the capital stock is not fully paid up.
- Certain specified charges and subsidies.
- Taxes, penalties and most liberalities (payments that do not produce a compensatory benefit to the company).

**Inventories.** Inventory is normally valued at the lower of cost or market value. For goods that are not identifiable, cost must be determined by a weighted-average cost-price method or the first-in, first-out (FIFO) method.

**Provisions.** Provisions are generally deductible for tax purposes if they are established for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Depreciation.** Land is not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates generally used in the industry. The following are some of the applicable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings	5
Office equipment	10
Motor vehicles	20
Plant and machinery	10

In certain circumstances, plant and machinery and other assets may be depreciated using the declining-balance method or an accelerated method.

**Relief for Tax Losses.** Losses may be carried forward for five years. Losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** Malagasy law does not provide for consolidated tax filings.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on goods sold and services rendered in Madagascar; General rate	20
Urban tax; annual tax on the rental value of property that is part of business assets	Various
Registration duties; on transfers of real property or businesses	Various
Social security contributions For family allowances, on gross monthly remuneration up to MGA 457,307	

<b>Nature of Tax</b>	<b>Rate (%)</b>
Employer	13
Employee	1
For illness and pregnancy, on gross monthly remuneration (no remuneration limit imposed); payable by employer	5

### **E. Foreign-Exchange Controls**

The currency in Madagascar is the ariary (MGA).

Exchange-control regulations exist in Madagascar for financial transfers to and from the country. Madagascar is a member of the South African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA).

### **F. Tax Treaties**

Madagascar has entered into tax treaties with France and Mauritius.

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### **A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30/35 (b)
Branch Tax Rate (%)	35
Withholding Tax Rate (%) (c)	
Dividends	10 (d)
Bank Interest Exceeding K 10,000	20 (e)
Royalties	20 (e)
Rent	10 (e)
Fees and Commissions	20 (e)
Payments to Nonresidents Without a Permanent Establishment in Malawi	15

Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	6/Unlimited (f)

- (a) For other rates, see Section B.
- (b) See Section B.
- (c) See Section B for an extended list of withholding taxes and for further details regarding these taxes.
- (d) This withholding tax is imposed on dividends paid to residents and non-residents.
- (e) This withholding tax is imposed on residents and on nonresidents with a permanent establishment in Malawi.
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Locally incorporated companies and branches of foreign companies are subject to corporate income tax on their income deemed to be from a source in Malawi. Income is deemed to be from a source within Malawi if it is derived from the carrying on in Malawi of a “trade.” For this purpose, “trade” covers any employment, profession, business, calling, occupation, or venture, including the leasing of property. Foreign-source income is exempt from corporate income tax.

**Rates of Corporate Income Tax.** Locally incorporated companies are subject to corporate income tax at a rate of 30%. Branches of foreign companies are subject to tax at a rate of 35%.

A 0% rate applies to companies operating in export-processing zones. For companies operating in priority industries, a 0% rate applies for a 10-year period, beginning when the company starts its business, and a 15% rate applies after the 10-year period.

Income tax is imposed on income from life business at a rate of 21%. Life insurance companies are now subject to tax on their investment income, including income from the leasing of property, in accordance with the general provisions of the Taxation Act.

The minimum tax has been abolished.

**Capital Gains and Losses.** Capital gains derived by companies are included in taxable income and are subject to tax at the applicable corporate income tax rate.

For assets qualifying for capital allowances, capital gains and losses equal the difference between the sales proceeds and the written-down tax value of the assets. For assets not qualifying for capital allowances, capital gains equal the difference between sales proceeds and the cost of the asset or open market price of the asset at the time of acquisition. The basis of a capital asset may be determined under either of the following methods:

- Applying the consumer price index published by the National Statistical Office at the date of disposal of the asset that is applicable to the year in which the purchase or the construction of the asset was effected or completed; or
- Using the value of the asset as of 1 April 1992 that was submitted to and accepted by the Commissioner of Taxes, adjusted by the consumer price index published by the National Statistical Office at the date of disposal of the asset.



Capital gains are not subject to tax if they are used within 18 months to purchase a qualifying asset similar to or related in service or use to the asset that was sold.

Capital losses on assets not qualifying for capital allowances can be offset only against current or future capital gains. However, such capital losses may be set off against other income in the year in which a company ceases to exist. Capital losses with respect to assets on which capital allowances have been granted are fully deductible from taxable income.

**Administration.** The year of assessment runs from 1 July to 30 June. Financial years ending on or before 31 August are normally treated as relating to the tax year ended in June of that calendar year.

Companies must file an income tax return with the Commissioner General of the Malawi Revenue Authority within 180 days after the end of the year of assessment.

At the beginning of each year of assessment, the company must estimate the tax payable in that year. This estimated tax, which is known as provisional tax, must be paid quarterly within 30 days after the end of each quarter. The total installments must equal at least 90% of the actual tax liability for the year of assessment.

If the amount of tax unpaid as a percentage of the total tax liability exceeds 10% but does not exceed 50%, a penalty equal to 25% of the unpaid tax is imposed. If the percentage of unpaid tax exceeds 50%, a penalty equal to 30% of the unpaid tax is imposed.

Interest on unpaid tax is levied at the rate of 0.75% for the first month and 0.25% for each additional month or part thereof.

**Dividends.** A final withholding tax at a rate of 10% is imposed on dividends distributed to resident and nonresident companies and individuals. Dividends are not subject to another 10% withholding tax if they are redistributed.

**Withholding Taxes.** Certain payments are subject to withholding tax. The tax is withheld by the payer and remitted to the Malawi Revenue Authority on a monthly basis by the 14th day of the following month. Recipients of the payments treat the withholding tax as an advance payment of tax that offsets income tax subsequently assessed.

Withholding Tax Exemption Certificates may be issued to qualifying taxpayers whose affairs are up to date (that is, companies that have no outstanding tax liabilities or who have made satisfactory arrangements to settle any outstanding tax liabilities). Under the Income Tax Act, no exemption from withholding tax is granted for bank interest, rent, royalties, fees, commission, payments for casual labor and payments to contractors and subcontractors. The Commissioner General may exempt from withholding tax the receipts of certain persons or organizations that are exempt from tax under the Income Tax Act. The table below provides withholding tax rates for payments to residents and to nonresidents with a permanent establishment in Malawi. For tax purposes, resident companies are companies incorporated in Malawi.

<b>Payment</b>	<b>Withholding Tax Rate (%)</b>
Bank interest exceeding K 10,000	20
Royalties	20
Rents	10
Payments of over K 60,000 per year for supplies to traders and institutions under tender or similar arrangements	
Foodstuffs	7
Other	10
Fees	10
Commissions	20
Payments for carriage and haulage	10
Payments exceeding K 60,000 for tobacco and other products	7
Payments to contractors and subcontractors in the building and construction industry	4
Payments for public entertainment	20
Payments of over K 500 for casual labor or services	20
Net sales of tobacco by tenants	3

The income of nonresidents arising or deemed to arise from a source within Malawi that is not attributable to a permanent establishment of the nonresident in Malawi is subject to a final withholding tax at the rate of 15% of the gross amount of such income unless the income is specifically exempt from tax under a double tax treaty or tax law.

A withholding tax is also imposed on dividends (see *Dividends* above).

**Foreign Tax Relief.** If foreign income that has been taxed in a foreign country is included in taxable income in Malawi, a tax credit is available to reduce the tax payable in Malawi. To qualify for this relief, the company must prove to the Commissioner General that it has paid the tax on the income in the foreign country. On receipt of this proof, the Commissioner General grants the relief.

### **C. Determination of Trading Income**

**General.** Taxable income is the income reported in the companies' financial statements, subject to certain adjustments.

Amounts received for the right of use or occupation of land and buildings or plant and machinery or for the use of patents, designs, trademarks or copyrights or other property, which in the opinion of the Commissioner General is of a similar nature, is included in taxable income.

Certain income is specifically exempt from tax under the Taxation Act, including foreign-source income.

Realized foreign-exchange gains and losses are assessable. Unrealized foreign-exchange gains and losses are not taxable.

Expenditure that is not of capital nature and losses, wholly and exclusively and necessarily incurred for the purposes of trade or in the production of income are allowable as deductions in determining the taxable income of a company. For tax purposes, certain expenses are not allowed as deductions, including the following:

- Losses or expenses that are recoverable under insurance contracts or indemnities;
- Tax on the income of the taxpayer or interest payable on such tax;
- Income carried to any reserve fund or capitalized;
- An expense relating to income that is not included in taxable income;
- Contributions by an employer to any pension, sickness, accident or unemployment fund that has not been approved by the Commissioner General;
- An expense for which a subsidy has been or will be received;
- Rent or cost of repairs to premises not occupied for purposes of trade; and
- Fringe benefits tax and any penalty chargeable on the fringe benefits tax.

Expenditure incurred within 18 months before the start of a manufacturing business is allowable as a deduction if it would normally be allowable in the course of business.

Deductions of employer pension contributions are subject to specified limitations. Amounts paid by a taxpayer in the form of an annuity, allowance or pension to a former employee or to a dependant of an employee, on the grounds of ill-health or old age is deductible, but for dependents, the deduction is limited to K 1,200.

If land is sold and if timber that is intended for sale is growing on the land, the market value of the timber is included the seller's taxable income. However, a deduction is allowed. If the land was acquired by the taxpayer for valuable consideration, the Commissioner General apportions a reasonable portion of that consideration to the timber and this amount may be deducted. If no valuable consideration was given for the land, the Commissioner General sets a reasonable value for the standing timber, which may be deducted.

In determining taxable income derived from farming, expenses with respect to the following are allowed as deductions:

- The stamping, leveling and clearing of land;
- Works for the prevention of soil erosion;
- Boreholes;
- Wells;
- Aerial and geophysical surveys; and
- Water control work with respect to the cultivation and growing of rice, sugar or other crops approved by the Minister of Finance and water conservation work (reservoir, weir, dam or embankment constructed for the impounding of water).

**Inventories.** Trading stock and work in progress must be valued on the basis of cost or market sales price.

Livestock may be valued for tax purposes at either cost or estimated market value.

### **Capital Allowances**

*Investment Allowance.* An investment allowance is granted at a rate of 100% of the cost of new or unused industrial buildings and plant or machinery that is used by the company for manufacturing. The rate is 40% if these items are used.

For purposes of investment allowance, plant and machinery does not include motor vehicles intended or adapted for use on roads.

Staff housing does not qualify for the investment allowance.

The investment allowance reduces the value of the asset for purposes of calculating the annual allowance in subsequent years of assessment.

*Initial Allowance.* The initial allowance is granted with respect to capital expenditure incurred during the year of assessment on certain assets that are used for the purposes of the company's trade or business or for farming purposes. The following are the rates for the initial allowance.

<b>Assets</b>	<b>Rate (%)</b>
Farm improvements, industrial buildings and railway lines	10
Articles (includes working instruments), implements, machinery and utensils (private passenger vehicles are excluded)	20
Farm fencing	33 <sup>1</sup> / <sub>3</sub>

*Annual Allowances.* Annual allowances are claimed on cost in the first year and subsequently on written-down values. For newly constructed commercial buildings, other than industrial buildings, with a cost of at least K 100,000,000 the rate is 2.5%. For farm improvements, industrial buildings and railway lines, the rate of the annual allowance is 5%. An annual allowance may not be claimed for these buildings if the cost is less than K 100,000,000. For farm fencing, the rate is 10%. For other assets, the allowances granted are determined by the Commissioner General. The rates vary between 10% and 100%, depending on the type of asset.

*Mining Allowance.* An allowance equal to 100% of expenditure incurred by mining companies may be claimed. The export allowance and transport allowance (see *Special Allowances* below) may not be claimed by mining companies.

*Balancing Charge or Allowance.* If an asset for which capital allowances have been claimed and allowed is disposed of during the year of assessment, the proceeds of disposal, if any, are set off against the written-down tax value of the asset, and either a balancing charge or allowance arises.

**Special Allowances.** Malawi offers several special tax allowances, which are described below.

*Export Allowance.* An allowance equal to 12% of gross export revenue is granted with respect to sales of nontraditional exports. Tea, tobacco, sugar and coffee do not qualify for this allowance.

*International Transport Allowance.* An allowance equal to 25% of the international transport costs with respect to nontraditional exports may be claimed. Tea, tobacco, sugar and coffee do not qualify for this allowance.

*Training Allowance.* A company may claim an additional 50% of training expenses as a training allowance.

**Research Expenditure.** Expenditure not of a capital nature that is incurred by a company on experiments and research with respect

to the company's business are allowed as a deduction from taxable income. Similar deductions apply to contributions, bursaries (broadly, scholarships) and donations to research institutions for the purposes of industrial research or scientific experimental work or education connected with the business of the company.

**Relief for Losses.** In general, losses incurred in trading operations may be carried forward and offset against profits in the following six years. However, losses incurred in manufacturing, agricultural and mining operations may be carried forward indefinitely. Loss carrybacks are not allowed.

**Groups of Companies.** Malawi does not allow consolidated returns or provide other types of relief for groups of companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax; levied on a wide range of imported and locally manufactured goods and services; collected by the Malawi Revenue Authority from the importer, manufacturer, wholesaler, retailer or provider of services	17.5%
Stamp duties	
Transfer of shares	0%
Sale of real property; imposed on sales proceeds	3%
Partnership instruments	K 20
Mortgages, bonds, debentures or covenants exceeding K 1,000	K 1.20 per each K 200
Registration fee	
Authorized capital of a company	
First K 1,000	K 50
Each additional K 2,000 or part thereof	K 15
Memorandum and Articles of Association of a company	K 100
Property tax; levied by local authorities on the value of industrial, commercial or private properties owned by a taxpayer in the district; payable semiannually; the rates vary depending on whether the property is located in an urban or rural area and whether it is an industrial, commercial or private property	Various
Fringe benefits tax; imposed on employers other than the government with respect to fringe benefits provided to employees, excluding employees earning less than K 5,000 per year	30%
Resource rent tax; imposed on after-tax profits of mining companies if the company's rate of return exceeds 20%	10%

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The currency in Malawi is the kwacha (K).

The Reserve Bank of Malawi is responsible for enforcing foreign-exchange control regulations in Malawi, which include the following:

- All imports into Malawi require prior approval. Commercial banks in Malawi are currently authorized to provide such approvals to importers.
- Approval for foreign equity investments in Malawian companies must be obtained from the Reserve Bank of Malawi.
- Foreign currency denominated loans to Malawian entities must be approved by the Reserve Bank of Malawi.

**Tax Clearance Certificate.** The following transactions require a tax clearance certificate from the Commissioner General:

- Transfer of land and buildings;
- Renewal of certificate of fitness for commercial vehicles; and
- Renewal of Business Residence Permit.

## F. Tax Treaties

Malawi has entered into double tax treaties with Denmark, France, Kenya, the Netherlands, Norway, South Africa, Sweden, Switzerland and the United Kingdom.

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**(4) 263-0033****E-mail: yeon-sun.soon@my.ey.com****A. At a Glance**

Corporate Income Tax Rate (%)	26 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	26 (a)
Withholding Tax (%)	
Dividends	0
Interest	15 (b)(c)
Royalties from Patents, Know-how, etc.	10 (b)
Distributions by Real Estate	
Investment Trusts and Property Trust Funds	26 (d)
Payments for Specified Services and for	
Use of Movable Property	10 (e)
Payments to Nonresident Contractors	13 (f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (g)

(a) Resident companies with paid-up ordinary capital of RM 2.5 million or less are taxed at 20% on the first RM 500,000 of chargeable income. The balance is taxed at 26%. Under a proposal, the tax rate would be reduced to 25% for the 2009 year of assessment. These rates do not apply to petroleum companies, which are taxed at a rate of 38%.

(b) A tax is imposed on gains derived from the disposal of real property or shares in a real property company (see Section B).



- (c) See Section B.
- (d) This is a final tax applicable only to payments to nonresidents.
- (e) Interest on approved loans is exempt from tax (see footnote (b) to Section F). Bank interest paid to nonresidents without a place of business in Malaysia is exempt from tax. Interest paid to nonresident companies on government securities and on ringgit-denominated Islamic securities is exempt from tax.
- (f) This withholding tax is imposed on exempt income distributed to nonresident corporate unit holders by Real Estate Investment Trusts (REITs) and Property Trust Funds (PTFs). Distributions made to nonresident individuals, trust bodies and other noncorporate unit holders are subject to withholding tax at a rate of 15%. For institutional investors, the withholding tax rate is 20%.
- (g) This is a final tax applicable to payments to nonresidents for specified services rendered in Malaysia and to payments for the use of movable property excluding payments for the use of ships under voyage charter, time charter or bare boat charter. The rate is reduced under certain tax treaties.
- (h) This withholding tax is treated as a prepayment of tax on account of the final tax liability.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident and nonresident companies are taxed only on income accruing in or derived from Malaysia. Resident companies engaged in banking, insurance, shipping or air transport are taxable on their worldwide income. A company is resident in Malaysia if its management and control is exercised in Malaysia; the place of incorporation is irrelevant.

**Rates of Corporate Tax.** Resident and nonresident companies are subject to income tax at a rate of 26%. Resident companies with paid-up ordinary capital of RM 2.5 million or less are taxed at a rate of 20% on the first RM 500,000 of chargeable income. The balance is taxed at 26%. Under a proposal, the tax rate would be reduced to 25% for the 2009 year of assessment.

Special rates apply to nonresident companies on income from interest (15%) and from royalties, know-how payments, specified services rendered in Malaysia and payments for the use of movable property (10%). Rental payments for ships under voyage charter, time charter or bare boat charter are exempt from withholding tax. For treaty withholding tax rates applicable to interest and royalties, see Section F.

For resident and nonresident companies carrying on petroleum operations, petroleum income tax is charged at 38% instead of the above.

Tax holidays or tax reductions are granted for participation in promoted activities or products, research and development activities, and capital expenditure on expansion projects and some other investments.

**Offshore Financial Center.** In 1990, the Malaysian government enacted legislation that created an offshore financial center on the island of Labuan.

Except for companies intending to engage in banking, insurance or the provision of fund management services, government approval is not required to establish an offshore company. An offshore company is required to have one director that may be a foreign corporation and at least one secretary who must be an officer of a Labuan trust company. It may not carry on business transactions with Malaysian residents, except for certain approved transactions. It may not transact business in the Malaysian ringgit, except to pay administrative and statutory expenses.

Offshore companies, including foreign offshore companies, may hold shares, debt obligations or other securities in domestic companies if such holding is not a controlling interest in the domestic company and if the holding is approved by the Registrar of Offshore Companies.

Offshore companies are subject to tax at a rate of 3% on their net audited profits derived from their offshore trading activities. Offshore trading activities include banking, insurance, trading, management, licensing and other business activities. Income derived from nontrading activities, such as dividends, interest and rent, is exempt from tax. Instead of paying tax at the 3% rate, offshore companies may elect to pay a fixed annual tax of RM 20,000. A tax rebate, up to the amount of tax charged, is available for *zakat* payments made to the Labuan Islamic religious authority.

Offshore companies may alternatively elect to be taxed under the Income Tax Act, 1967 (ITA). If they make such election, the rules described above in *Corporate Income Tax* and *Rates of Corporate Tax* apply. Offshore companies are exempt from the obligation to withhold tax on payments to nonresidents.

Offshore companies may open and maintain bank accounts in foreign currency in Malaysia or abroad. No restrictions are imposed on the movement of funds through these accounts.

**Administration.** The year of assessment is the calendar year, but companies may adopt their accounting year as the basis period for a year of assessment. Income tax is chargeable in the year of assessment on the income earned in the basis period for that year of assessment.

Malaysia has a self-assessment regime under which companies must file their tax returns within seven months after the end of their accounting period. A tax return is deemed to be an assessment made on the date of filing the return.

Companies must provide an estimate of their tax payable no later than 30 days before the beginning of their accounting period. The estimated tax is payable in equal monthly installments by the 10th day of each month beginning in the second month of the accounting period. Companies that begin their operations during a year of assessment are exempt from the requirement to pay their tax by installments in the year in which they commence business and in the following year. They are required only to settle the tax due when they file their income tax returns. All companies may revise their estimate of tax payable in the sixth and ninth months of their accounting period.

Companies must pay any balance of tax due by the tax filing deadline.

**Dividends.** It is proposed that, effective from the 2008 year of assessment, a single-tier system of taxation replaces the full imputation system. Under the proposed single-tier system, dividends paid, credited or distributed by a company is exempt in the hands of the shareholders. However, a six-year transitional rule provides that companies may continue to pay franked dividends to their shareholders up to 31 December 2013 under the prior imputation system by using corporate income tax that has been paid or deemed paid up to 31 December 2007. Any balance remaining in the

dividend franking account after 31 December 2013 will be disregarded. However, at any time, a company may make an irrevocable election to proceed to the single-tier system and forego the dividend franking credit balance.

Companies are allowed only to pay franked dividends in cash and with respect to “ordinary shares” during the transitional period. For this purpose, an “ordinary share” is a share other than one that carries a dividend right of a fixed amount or a dividend right at a fixed percentage of the nominal value of the share or of the profits of the company. If a dividend is paid to an ordinary shareholder, an amount equal to the tax due on the dividend is drawn from the dividend franking account and imputed to the shareholder. Dividends received by the shareholder are taxed but a tax credit is allowed in calculating the tax payable by the shareholder.

As long as the company does not overdraw its dividend franking account, no payment is due from the company to the government as a result of paying a dividend. However, if the Malaysian corporation has no balance in the dividend franking account, the company is required to make an actual payment of tax to the Malaysian tax authorities when it makes a distribution to shareholders.

**Foreign Tax Relief.** Malaysian law allows both bilateral and unilateral foreign tax relief. However, because Malaysia generally does not tax foreign-source income, foreign tax relief is usually not applicable, except for companies engaged in banking, insurance, shipping or air transport. These companies are taxed on their worldwide income and may claim foreign tax relief with respect to foreign taxes imposed on their foreign-source income.

### C. Determination of Trading Income

**General.** The assessment is based on the audited financial statements, subject to certain adjustments. In practice, a nonresident company trading in Malaysia prepares the financial statements of its Malaysian branch in accordance with the Malaysian Companies Act. This act sets out disclosure requirements for financial statements, but does not prescribe the accounting treatment for specific transactions. Malaysian Financial Reporting Standards, which are based on the International Financial Reporting Standards (IFRS), govern the accounting treatment for transactions.

Deductions are allowed for expenses incurred wholly and exclusively in the production of income and for bad debts. No deduction is allowed for the book depreciation of fixed assets, but statutory depreciation (capital allowances) is granted. In general, the cost of leave passages is not deductible. The deductibility of entertainment expenses is generally limited to 50% of the costs incurred. However, a full deduction for entertainment expenses may be claimed in specified circumstances. Double deductions are available with respect to certain expenses relating to the following: approved trade fairs, exhibitions or trade missions; maintenance of overseas trade offices; and research and development.

**Inventory.** Trading inventory is valued at the lower of cost or net realizable value. Cost must be determined under the first-in, first-out (FIFO) method; the last-in, first-out (LIFO) method is not accepted.

**Provisions.** General provisions and reserves for anticipated losses or contingent liabilities are not deductible.

### **Capital Allowances**

*Plant and Machinery.* Depreciation allowances are given on capital expenditure incurred on the acquisition of plant and machinery used for the purposes of trade or business. An initial allowance of 20% and an annual allowance ranging from 10% to 20% are granted for qualifying expenditure.

*Industrial Buildings.* An initial allowance of 10% and an annual allowance of 3% are granted for qualifying expenditure on the construction or purchase of industrial buildings. As a result of these allowances, qualifying expenditure is fully written off in the thirtieth year after the year of construction or purchase. For purposes of the allowances, industrial buildings include hotels.

*Child Care Centers.* An annual allowance of 10% is granted for expenditure incurred for the construction or purchase of buildings used as child care facilities for employees.

*Employee Housing.* An annual allowance of 10% is granted for expenditure incurred by manufacturers and certain approved service companies for the purchase or construction of buildings for the accommodation of employees. Buildings occupied by management or administrative staff do not qualify for this allowance.

*Educational Institutions.* An annual allowance of 10% is granted for expenditure on the construction or purchase of buildings used as schools or educational institutions or for industrial, technical or vocational training.

*Motor Vehicles.* Capital expenditure incurred on motor vehicles qualifies for an annual allowance of 20%. Allowances on non-commercial vehicles are restricted to RM 100,000 per vehicle if the vehicle has not been used prior to purchase and if the total cost of the vehicle does not exceed RM 150,000.

Allowances are restricted to RM 50,000 per vehicle if the vehicle costs more than RM 150,000.

*Office Equipment.* An initial allowance of 20% and an annual allowance of 10% are granted for capital expenditure on office equipment.

*Computer Equipment.* An initial allowance of 20% and an annual allowance of 40% are granted for capital expenditure on computer hardware and software.

*Small Value Asset.* For assets with a value not exceeding RM 1,000, a 100% allowance is given in the year the asset is acquired. However, the total allowance granted for such assets is capped at RM 10,000.

*Agriculture.* Annual allowances are given on capital expenditure incurred on new planting (50%), roads or bridges (50%), farm buildings (10%) and buildings for accommodation of farm workers (20%). Accelerated allowances may be allowed at the discretion of the Minister of Finance.

*Forestry.* Annual allowances are given on capital expenditure incurred for purposes of extraction of timber from a forest. The rates

are 10% for a road or building and 20% for a building for accommodation of employees.

*Other Matters.* Capital allowances are generally subject to recapture on the sale of an asset to the extent the sales proceeds exceed the tax value after depreciation. To the extent sales proceeds are less than the depreciated value, an additional allowance is given.

**Relief for Trading Losses.** Trading losses may offset all other chargeable income of the same year. Unused losses may be carried forward indefinitely for offset against chargeable income from business sources. Excess capital allowances may not be offset against other chargeable income of the same year, but may be carried forward indefinitely for offset against income from the trade that generated the capital allowances.

The carryforward of losses and excess capital allowances is subject to the shareholders remaining substantially (50% or more) the same at the end of the year in which the losses or capital allowances arose and on the first day of the year of assessment in which relief is claimed. If the shareholder of the loss company is another company, the loss company is deemed to be held by the shareholders of that other company.

**Groups of Companies.** Under group relief provisions, 50% of current-year adjusted losses may be transferred by one company to another company in a group. A group consists of a Malaysian-incorporated parent company and all of its Malaysian-incorporated subsidiaries. Two Malaysian-incorporated companies are members of the same group if one is at least 70% owned by the other, or both are at least 70% owned by a third Malaysian-incorporated company. To obtain group relief, the recipient of the losses and the transferor of the losses must have the same accounting period and each must have paid-up capital exceeding RM 2.5 million.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Sales tax; imposed on certain imported goods and on certain locally manufactured goods sold or otherwise disposed of by the manufacturer	
Cigarettes and liquor	5
Other goods	5/10
Service tax; imposed on the performance of specified services	5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Over the years, the foreign exchange administration policies have been progressively liberalized and simplified. Nonresidents are now free to make direct or portfolio investments in Malaysia in either ringgits or foreign currency. No restrictions are imposed on the repatriation of capital, profits or income earned in Malaysia.

However, the ringgit may not be traded overseas, and payments outside Malaysia should be made in foreign currency.

Nonresidents may obtain any amount of foreign currency credit facilities from licensed onshore banks and from nonbank residents that do not have domestic credit facilities.

Nonresidents may lend in foreign currency to residents if the resident's total foreign currency is within permitted limits.

**Foreign-Equity Restrictions.** The general policy guidelines provide that foreign companies are allowed to hold up to 70% equity in Malaysian companies. Depending on the industry, government approval may be required for foreign equity in excess of 70%. For new investments in the manufacturing sector, up to 100% foreign equity may be allowed.

**Antiavoidance Legislation.** Legislation permits the Revenue Authority to disregard or vary any transaction that is believed to have the effect of tax avoidance.

**Transfer Pricing.** The tax authorities have issued transfer-pricing guidelines, which apply to cross-border transactions and local transactions between associated enterprises. The guidelines are based on the arm's length principle set forth in the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines and provide several methods for determining an arm's length price. The guidelines also provide a detailed list of information, documentation and records that need to be maintained with respect to related-party transactions.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends (a) %	Interest (b) %	Royalties %
Albania	—	10	10
Australia	—	15	10 (d)
Austria	—	15	10
Bahrain	—	5	8 (d)
Bangladesh	—	15	10 (d)
Belgium	—	10	10
Bosnia and Herzegovina (c)	—	10	8
Canada	—	15	10 (d)
Chile (c)	—	15	10
China	—	10	10
Croatia	—	10	10
Czech Republic	—	12	10
Denmark	—	15	10 (d)
Egypt	—	15	10
Fiji	—	15	10
Finland	—	15	10 (d)
France	—	15	10 (d)
Germany	—	15	10 (d)
Hungary	—	15	10
India	—	10	10 (d)
Indonesia	—	15	10
Iran (c)	—	15	10
Ireland	—	10	8
Italy	—	15	10

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Japan	—	10	10
Jordan	—	15	10
Kazakhstan (c)	—	10	10
Korea	—	15	10
Kuwait	—	10	10
Kyrgyzstan	—	10	10
Lebanon	—	10	8
Luxembourg	—	10	8
Malta	—	15	10
Mauritius	—	15	10
Mongolia	—	10	10
Morocco (c)	—	10	10
Myanmar (c)	—	10	10
Namibia	—	10	5 (d)
Netherlands	—	10	8 (d)
New Zealand	—	15	10 (d)
Norway	—	15	0
Pakistan	—	15	10 (d)
Papua New Guinea	—	15	10
Philippines	—	15	10 (d)
Poland	—	15	10 (d)
Romania	—	15	10 (d)
Saudi Arabia (c)	—	10	15
Seychelles	—	10	10
Singapore	—	10	8
South Africa	—	10	5
Spain (c)	—	10	7
Sri Lanka	—	10	10 (e)
Sudan	—	10	10
Sweden	—	10	8 (d)
Switzerland	—	10	10 (d)
Syria (c)	—	10	10
Taiwan (g)	—	10	10
Thailand	—	15	10 (d)
Turkey	—	15	10
USSR (f)	—	15	10 (d)
United Arab Emirates	—	5	10
United Kingdom	—	10	8 (d)
Uzbekistan	—	10	10
Venezuela (c)	—	15	10
Vietnam	—	10	10
Zimbabwe (c)	—	10	10
Nontreaty countries	—	15	10

- (a) No dividend withholding tax is imposed in Malaysia. However, for dividends paid under the transitional imputation system, tax would have been deducted at source at the prevailing corporate tax rate for that year of assessment (see Section B).
- (b) Interest on approved loans is exempt from Malaysian tax. An approved loan is a loan or credit made by a nonresident to the government, state government, local authority or a statutory body, or guaranteed by the government or state government.
- (c) These treaties have not yet been ratified.
- (d) Approved royalties are exempt from Malaysian tax.
- (e) Approved royalties are taxed at half the domestic rate, that is, 5%.
- (f) Malaysia is honoring the USSR treaty with respect to the republics of the former USSR, including the Baltic states.

- (g) This is the income tax treaty between the Taipei Economic and Cultural Office (TECO) in Malaysia and the Malaysian Friendship and Trade Centre (MFTC) in Taipei.

Malaysia has also entered into limited agreements covering only aircraft and ship transportation with Argentina, Saudi Arabia and the United States.

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## MALDIVES

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### A. At a Glance

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	0

### B. Taxes on Corporate Income and Gains

Except for the bank profit tax, the Maldives does not impose taxes on income or capital gains.

Bank profit tax is imposed at a rate of 25% on the net profits of resident and nonresident banks.

### C. Other Taxes

**Stamp Duty.** Stamp duty is imposed at a rate of 0.01% on all imports and exports.

**Customs Duties.** Customs duties on imports vary according to the type of import. The following are some of the rates of the duties: petrol, kerosene and diesel oil, 10%; lubricating oil, 25%; generators, 20%; and textiles, 25%.

### D. Foreign-Exchange Controls

The Maldivian currency is the Maldivian rufiyaa (Mrf).

The Maldives does not impose any strict foreign-exchange controls. Foreign investors may remit all of their net profits after payment of royalties, which are payments made to the government. The amount of the royalties varies according to the type of business and size of operations.



# MALTA

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**A. At a Glance**

Corporate Income Tax Rate (%)	35
Capital Gains Tax Rate (%)	35 (a)
Branch Tax Rate (%)	35
Withholding Tax (%)	0 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

(a) See Section B.

(b) See Section F.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies that are considered to be ordinarily resident and domiciled in Malta are subject to income tax on their worldwide income. Companies registered in Malta are considered resident in Malta. In addition, companies registered outside Malta are considered to be resident in Malta if management and control is exercised in Malta.

**Rates of Corporate Tax.** Income tax is the only tax imposed on the profits of companies. The standard rate of income tax is 35%.

**Tax Incentives.** Malta offers several tax incentives. These incentives are contained in the Business Promotion Act and in regulations to the act, as well as in the Income Tax Act.

*Business Promotion Act.* The Business Promotion Act, which amended the Industrial Development Act in 2001, introduced greater scope and flexibility to the incentives that were already available for the promotion of business and significantly broadened the range of qualifying sectors and activities. The act provides several fiscal and nonfiscal incentives, including the following:

- Reduced rates of income tax;
- Investment tax credits;
- Value added incentive scheme;
- Investment allowances;

- Reduced tax rate for reinvested profits; and
- Incentives for job creation.

Details regarding these incentives are provided below.

Under the reduced rates incentive, qualifying companies may benefit from reduced income tax rates of 5% or 10%, up to 31 December 2008.

The act provides investment tax credits, which are calculated as the higher of 50% of the amount invested or 50% of the first two years' wage cost for new jobs created. For small and medium-sized enterprises, the above percentages are increased to 65%. Any unused investment tax credits may be carried forward and increased by 7% each year.

Under the value added incentive scheme, companies may benefit from reduced rates of income tax according to the increase in the value added of their activities. The reduced rates of income tax are identical to those under the reduced rates incentive (see above). This incentive will be phased out by 31 December 2008 (2009 year of assessment).

The act provides for investment allowances, which are tax deductions allowed in addition to the normal tax depreciation. These allowances are 50% of the investment in plant and machinery and 20% of the investment in industrial buildings or structures.

Income tax on profits reinvested in projects that are approved by the Malta Enterprise is reduced by 19.25%.

As mentioned above, the reduced rates of tax and the value added incentive scheme will be phased out by 31 December 2008 (2009 year of assessment). The investment tax credit will also be phased out. However, companies benefiting from this tax credit will be allowed to use any unabsorbed tax credits that were not used in prior years.

A bill to amend the Malta Enterprise Act has recently been published. The bill would amend the current incentive package and supplement the existing incentives under the Business Promotion Act and regulations.

*Income Tax Act.* The Income Tax Act provides for a deduction of 150% of research and development expenditure incurred.

*International Trading Companies.* Broadly, International Trading Companies are companies registered in Malta that engage only in the carrying out of trading activities with persons outside Malta who are not resident in Malta. Effective from 1 January 2007, no new ITC may be registered. By 31 December 2010, ITCs will lose their status, but the profits earned by ITCs through 31 December 2010 will continue to be governed by the ITC refund mechanism until 31 December 2014. Existing ITCs have an option to switch to the new refundable tax credit regime described in *Dividends* below.

*Shipping.* Maltese shipping law is modeled on British legal sources by incorporating measures containing a system of mortgages that provide excellent security. However, Maltese law also includes measures offering attractive fiscal packages to the shipping industry.

An organization qualifies as a shipping organization if it engages in one or more specified activities and if it obtains a license from the Registrar-General to enable it to carry on such activities. The following are the specified activities:

- The ownership, operation (under charter or otherwise), administration and management of a ship or ships registered as a Maltese ship under the Merchant Shipping Act and the carrying on of related financial, security and commercial activities;
- The ownership, operation (under charter or otherwise), administration and management of a ship or ships registered under the flag of another state and the carrying on of related financial, security and commercial activities;
- The holding of shares or other equity interests in Maltese or foreign entities that are established for any of the purposes stated in the law and the carrying on of related financial, security and commercial activities;
- The raising of capital through loans, the issuance of guarantees or the issuance of securities by a company if the purpose of such activity is to achieve the objects of the shipping organization itself or for other shipping organizations within the same group; and
- The carrying on of such other activities within the maritime sector that are prescribed in regulations.

A shipping organization may be established as a limited liability company (public or private), a foreign corporate body that has established a place of business in Malta or another type of entity specified in the law.

If the activities of a shipping organization are restricted to the activities and related activities described above, the following favorable tax treatment applies:

- No income tax is imposed on the income derived from the shipping activities of a licensed shipping organization;
- No income tax is imposed on gains arising on the liquidation, redemption, cancellation or any other disposal of shares, securities or other interests, including goodwill, held in a licensed shipping organization owning, operating, administering or managing a tonnage tax ship while the ship is a tonnage tax ship; and
- No income tax is imposed on interest or other income paid to a person with respect to the financing of the operations of licensed shipping organizations.

*Collective Investment Schemes or Funds.* Collective Investment Schemes or Funds must be licensed under the Investment Services Act, 1994. Collective Investment Schemes usually take the form of corporate funds, including open-ended (SICAVs) and close-ended funds, or noncorporate funds, such as unit trusts.

The income of Collective Investment Schemes (other than income from immovable property located in Malta and investment income) is exempt from tax. In addition, resident prescribed funds are subject to withholding tax on their local investment income. These funds are subject to a 15% final withholding tax on bank interest received and to a 10% final withholding tax on other investment income received, such as interest on bonds and government stocks (units issued by the government to which the general public is invited to subscribe). Under regulations issued by the Inland Revenue Department, prescribed funds are funds

whose assets in Malta amount to 85% or more of their total assets. Capital gains derived by funds from disposals of investments and assets are also exempt from tax. Funds cannot benefit from any treaty provisions.

Capital gains derived by unit holders on disposals of their units in prescribed funds listed on the Malta Stock Exchange are exempt from tax. Unit holders in unlisted prescribed funds are subject to tax on their gains. Tax at 15% is withheld on the capital gains realized by resident investors on the disposal of listed shares in accumulator nonprescribed funds. For nonresident Collective Investment Schemes, the withholding tax provisions apply only if the disposal of the shares is effected through an authorized financial intermediary. If the disposal of shares in nonresident nonprescribed funds is not effected through an authorized financial intermediary, no withholding tax is due and any capital gains must be disclosed by the resident investor in the individual's tax return and taxed at the normal rates of income tax, up to a maximum of 35%.

**Capital Gains.** Income tax is imposed on capital gains derived from the transfer of ownership of the following assets only:

- Immovable property. However, transfers of immovable property or rights over immovable property that are subject to the new Property Transfers Tax (see *Property Transfers Tax* below) are exempt from income tax.
- Securities (company shares that do not provide for a fixed rate of return, units in Collective Investment Schemes and units relating to linked long-term business of insurance [life insurance contracts under which benefits are wholly or partially determined by reference to the value of, or income from, property]).
- Business goodwill.
- Copyrights, patents, trademarks and tradenames.
- Beneficial interests in trusts.

For purposes of the capital gains rules, "transfer" has a broad definition that is not restricted to sale. It also includes any assignment or cession of any rights, reduction of share capital, liquidation or cancellation of units or shares in Collective Investment Schemes and other types of transactions. The definition does not include inheritance.

Transfers that are exempt from tax include the following:

- Donations to philanthropic institutions;
- "Emphyteutical" grants for periods of less than 50 years (the Civil Code defines "emphyteusis" as a contract under which one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated annual rent or ground rent, which the grantee agrees to pay to the grantor, either in money or in kind, as an acknowledgment of the tenure);
- Transfers of chargeable assets between companies belonging to the same group of companies;
- Transfers by nonresidents of securities in Maltese companies that are not primarily engaged in holding immovable property in Malta;
- Transfers of securities listed on the Malta Stock Exchange as well as transfers of units relating to linked long-term business of insurance if the benefits derived by the units are wholly determined by reference to the value of, or income from, securities listed on the Malta Stock Exchange; and

- Transfers by nonresidents of units in Collective Investment Schemes.

Rollover relief for assets used in business is also available if the asset has been used in the business for at least three years and if it is replaced within one year by an asset used only for a similar purpose.

Taxable capital gains are included in chargeable income and are subject to income tax at the normal income tax rates. Capital losses may be set off only against capital gains. Trading losses may be carried forward to offset capital gains in future years.

Provisional tax of 7% of the consideration or of the value of the donation must be paid by a seller on the transfer of property if the transaction is subject to the capital gains regime. The Commissioner of Inland Revenue may authorize a reduction in the rate of provisional tax if it can be proved that the capital gain derived from the transaction is less than 20% of the consideration. Provisional tax paid is allowed as a credit against the income tax charge.

**Property Transfers Tax.** In 2006, Article 5A, which regulates the Property Transfers Tax, was added to the Income Tax Act. This tax is a final tax, which is imposed at a rate of 12% on the value of the consideration for transfers of immovable property and rights over immovable property. In general, the Property Transfers Tax is imposed instead of the income tax on capital gains. However, in certain circumstances, taxpayers may elect to be taxed on transfers of immovable property under the income tax measures instead of under the 12% tax regime.

**Administration.** The year of assessment is the calendar year. Income tax for a year of assessment is chargeable on income earned in the corresponding basis year, which is generally the preceding calendar year. A company may adopt an accounting period other than the calendar year, subject to approval by the Inland Revenue Department.

Companies with a January to June accounting year-end must file their income tax returns by 31 March (30 April if an electronic submission is made) of the year of assessment. Companies with other accounting year-ends must file their income tax returns within 9 months after the end of their accounting year (10 months if an electronic submission is made).

A self-assessment system applies in Malta. The Inland Revenue Department issues an assessment only if it determines that a greater amount of income should have been declared or that the company omitted chargeable income from its tax return.

Companies must make three provisional payments of tax, generally on 30 April, 31 August and 21 December. The provisional payments are equal to specified percentages of the tax due as reported in the last income tax return filed with the Commissioner of Inland Revenue on or before 1 January of the year in which the first provisional tax payment is due. The percentages are 20% for the first payment, 30% for the second and 50% for the third. Companies must pay any balance of tax payable on the due date for submission of the income tax return for that year of assessment.

Penalties are imposed for omissions of income, and interest is charged for late payments of tax. The Inland Revenue Department pays interest on certain late refunds.

*Advance Revenue Rulings.* Advance Revenue Rulings may be obtained from the Inland Revenue on certain transactions, activities and structures. Rulings survive any change in legislation for a period of two years. In all other circumstances, rulings are binding for five years. Renewals may be requested.

**Dividends.** Malta operates a full imputation system. Under this system, the tax paid by the company is imputed as a credit to the shareholder receiving the dividends. The tax system distinguishes between taxed income and untaxed income. Taxed income is further segregated between Malta-source income, which is allocated to the Maltese Taxed Account, and foreign-source income, which is allocated to the Foreign Income Account. Foreign-source income includes dividends, capital gains, interest, rents and royalties derived from assets situated outside Malta; profits of a branch or permanent establishment situated outside Malta; dividends received from another company resident in Malta if the dividends are paid out of profits allocated to the payer's Foreign Income Account. The foreign-source income of companies forming a banking group, however, is allocated to the Foreign Income Account only if certain conditions are fulfilled.

Persons receiving dividends paid out of taxed profits do not suffer any further tax. Dividends paid out of company profits that have suffered tax at a rate of tax lower than the present normal tax rate of 35% are subject to a further tax equal to the difference between the current rate and the lower rate. This rule applies only if the distribution is made to a resident person who is not a company.

Effective from the 2008 year of assessment, dividends paid out of profits allocated to the Final Taxed Account do not suffer any further tax. These dividends are not included in chargeable income. The law prescribing the items that will be allocated to the Final Taxed Account has not yet been passed. A draft version of the law provides for a long list of profits that will be allocated to the Final Taxed Account.

A final withholding tax of 15% is imposed on dividends paid out of untaxed income to Maltese resident individuals and bodies of persons other than companies.

Dividends paid to nonresidents are not subject to withholding tax regardless of whether they are paid out of taxed or untaxed profits.

Dividends paid by petroleum companies are exempt from tax, and no tax credit is granted to shareholders receiving such dividends.

Dividends received from foreign companies are included in chargeable income, but double tax relief is available.

*Refundable Tax Credit System.* The Maltese House of Representatives recently assented to a law that implements an agreement with the European Union (EU) to introduce a refundable tax system for all companies distributing dividends to shareholders. The imputation system under which the tax paid by a company is essentially treated as a prepayment of tax on behalf of the shareholder has been retained but a new refund system is introduced.

The new refundable tax system applies both to profits allocated to a company's Maltese Taxed Account and to profits allocated to its Foreign Income Account and is available both to residents and nonresidents.

A person receiving a dividend from a company registered in Malta from profits allocated to its Maltese Taxed Account or its Foreign Income Account that do not consist of passive interest or royalties may claim a refund of six-sevenths of the tax paid by the distributing company on the profits out of which the dividends were paid. As a result of the introduction of the new system, the dividend recipient receives a full imputation credit plus a refund of six-sevenths of the tax paid by the distributing company.

Distributions of profits derived from passive interest or royalties do not qualify for the six-sevenths refund. Instead, they qualify for a refund of five-sevenths of the tax paid by the company.

The six-sevenths and five-sevenths refunds apply to distributions made by companies that do not claim any form of double tax relief. Dividends paid out of profits allocated to the Foreign Income Account with respect to profits for which the distributing company has claimed any form of double tax relief (double tax treaty relief, unilateral relief or the flat rate foreign tax credit; see *Foreign Tax Relief* below) are entitled to a refund equal to two-thirds of the tax that was suffered by the distributing company gross of any double tax relief. However, for purposes of this calculation, the amount of tax suffered by the company is limited to the actual tax paid in Malta by the distributing company.

The notion of economic rent has been introduced. This notion enhances the distinction in tax treatment as to how profits are derived, directly or indirectly. Profits which are deemed to arise from immovable property situated in Malta are excluded from the tax refund system agreed to with the EU Commission.

The refundable tax system is extended to shareholders of foreign companies that have Maltese branches. Tax paid in Malta by branches on profits attributable to activities performed in Malta is refunded when such profits are distributed.

Persons must register with the Commissioner of Inland Revenue to benefit from the tax refunds described above. Subsidiary legislation prescribing the requirements for refund registration and the procedure for claiming the refunds is expected to be enacted by the end of 2009.

**Participation Exemption and Participating Holding System.** The Maltese income tax system exempts from tax income and capital gains derived by a company registered in Malta from a participating holding or from the disposal of such holding. This exemption is referred to as the participation exemption.

Under the recent tax reform, a holding in a company in another company is considered to be a participating holding if any of the following circumstances exist:

- A company holds directly at least 10% the equity shares of a company not resident in Malta whose capital is wholly or partly divided into shares. If the shares held confer different percentages of entitlement with respect to votes, to profits available for distribution and to assets available for distribution on a

winding up, the lowest percentage is deemed to be the percentage of equity shares held.

- A company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled at its option to call for and acquire the entire balance of the equity shares not held by that equity shareholder company to the extent permitted by the law of the country in which the equity shares are held.
- A company is an equity shareholder in a company not resident in Malta and the equity shareholder company is entitled to first refusal in the event of the proposed disposal, redemption or cancellation of all of the equity shares of that company not held by that equity shareholder company.
- A company is an equity shareholder in a company not resident in Malta and is entitled to either sit on the board or appoint a person to sit on the board of that company as a director.
- A company is an equity shareholder that invests Lm 500,000 (or the equivalent sum in a foreign currency) or more in a company not resident in Malta and that investment in the company not resident in Malta is held for an uninterrupted period of at least 183 days.
- A company is an equity shareholder in a company not resident in Malta, the holding of such shares is for the furtherance of its own business, and the holding is not held as trading stock for the purpose of a trade.

A holding of a company in a body of persons that is constituted, incorporated or registered outside Malta and not resident in Malta and is of a nature similar to a partnership *en commandite* (limited partnership), the capital of which is not divided into shares regulated by the Companies Act, is deemed to constitute a participating holding if it satisfies the provisions of any of the bullets above which apply *mutatis mutandis* to such holding. For purposes of this provision, the terms “equity shares” or “shares” refer to the capital in such body of persons that entitles the holder the right to votes, to profits available for distribution and to assets available for distribution on a winding up of such body of persons, and the term “equity shareholder” is construed accordingly.

An antiabuse provision has been introduced with respect to the participation exemption. Dividends derived from participating holdings acquired after 1 January 2007 qualify for the exemption if the body of persons in which the participation is held satisfies any the following conditions:

- It is resident or incorporated in a country or territory that forms part of the EU;
- It is subject to a foreign tax of at least 15%; and
- It does not derive more than 50% of its income from passive interest or royalties.

If none of the above conditions is satisfied, both of the following two conditions must be fulfilled:

- The equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment. For this purpose, the holding of shares by a company registered in Malta in a company or partnership not resident in Malta that derives more than 50% of its income from portfolio investments is deemed to be a portfolio investment.



- The body of persons not resident in Malta or its passive interest or royalties has been subject to a foreign tax of at least 5%.

**Foreign Tax Relief.** Under tax treaty provisions and the domestic law, a tax credit against Maltese tax is granted for foreign tax suffered. The amount of the credit is the lower of Maltese tax on the foreign income and the foreign tax paid.

Maltese companies may also reduce their tax payable in Malta by claiming double tax relief with respect to British Commonwealth income tax.

Unilateral tax relief, which is another form of double tax relief, applies if treaty relief is not available and if the taxpayer has proof of the foreign tax suffered. The unilateral relief is also available for underlying tax.

Another form of double tax relief is a flat-rate foreign tax credit, which may be claimed by companies that have a special empowerment clause in their Memorandum and Articles of Association. This credit, which is equivalent to 25% of the net income received (before any allowable expenses), applies to all foreign-source income that may be allocated to the Foreign Income Account. An auditor's certificate stating that the relevant income is foreign-source income is sufficient evidence that profits may be allocated to the Foreign Income Account. The flat-rate foreign tax credit is added to chargeable income and credited against the Maltese tax charge. The credit is limited to 85% of the Maltese tax due before deducting the credit.

The interaction of the four types of double tax relief not only ensures that tax is not paid twice on the same income; it also reduces the overall effective rate of the Maltese tax.

### **C. Determination of Trading Income**

**General.** Chargeable income is the net profit reported in the companies' audited financial statements, subject to certain adjustments. Expenses incurred wholly and exclusively in the production of income are deductible.

Expenses that are not deductible include the following: amortization of goodwill; all types of provisions; voluntary payments; expenses recoverable under insurance; pretrading expenses (except for expenditure incurred with respect to staff training, salaries or wages and advertising within the eighteen months preceding the date on which the company begins to carry on its trading activities); unrealized exchange differences; and other expenses that are not incurred in the production of income.

**Inventories.** Inventories are normally valued at the lower of cost or net realizable value in accordance with generally accepted accounting principles.

**Tax Depreciation (Capital Allowances).** Tax depreciation allowances include initial allowances and annual wear-and-tear allowances.

Initial allowances are granted at a rate of 10% with respect to new industrial buildings and structures.

Wear-and-tear allowances for plant and machinery are calculated using the straight-line method. Industrial buildings and structures are also depreciated using the straight-line method.

The following are the minimum number of years over which the principal categories of plant and machinery may be depreciated.

Asset	Years
Computers and electronic equipment	4
Computer software	4
Motor vehicles	5*
Furniture, fitting and soft furnishings	10
Other machinery	5
Other plant	10

\* The cost of noncommercial motor vehicles is limited to Lm 3,000.

The annual straight-line rate for industrial buildings and structures, including hotels, is 2%. Commercial buildings may not be depreciated.

Capital allowances are generally subject to recapture on the sale of an asset to the extent the sale proceeds exceed the tax value after depreciation. Any amounts recaptured are added to taxable income for the year of sale or are used to reduce the cost of a replacement asset. To the extent sales proceeds are less than the asset's depreciated value, an additional allowance is granted. Capital allowances on assets for which investment allowances have been granted are not recaptured, and no additional allowances described in the preceding sentence are granted.

**Groups of Companies.** A company that is part of a group of companies may surrender losses to another member of the group. Two companies are deemed to be members of a group of companies for tax purposes if they are resident in Malta and not resident in any other country for tax purposes, and if one of the companies is a 51% subsidiary of the other or both are 51% subsidiaries of a third company that is resident in Malta. A company is considered to be a 51% subsidiary of another company if all of the following conditions exist:

- More than 50% of the subsidiary's ordinary shares and more than 50% of its voting rights are owned directly or indirectly by the parent company;
- The parent company is beneficially entitled to receive directly or indirectly more than 50% of profits available for distribution to the ordinary shareholders of the subsidiary; and
- The parent company is beneficially entitled to receive directly or indirectly more than 50% of the assets of the subsidiary available for distribution to the ordinary shareholders of the subsidiary in the event of a liquidation.

The group company surrendering the losses and the group company receiving the losses must have accounting periods that begin and end on the same dates, except for newly incorporated companies and companies in the process of liquidation.

**Relief for Losses.** Tax losses incurred in a trade or business may be carried forward indefinitely to offset all future income. Unabsorbed tax depreciation may also be carried forward indefinitely, but may offset only income derived from the same source. A carry-back of losses is not allowed.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; standard rate	18
Stamp duty on various documents and transfers of ownership	
Sales of real property	5
Transfers of marketable securities	2
Life insurance policies	0.1
Other insurance policies	10
Excise duty, on various commodities including cigarettes, soft drinks and beer; although levied on producers or importers when they distribute the products for general consumption, the duty is ultimately borne by consumers because it is included in the price of the products	Various

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** When Malta became a member of the EU, it abolished foreign-exchange controls and introduced some reporting obligations under the External Transactions Act.

**Antiavoidance Legislation.** Maltese law includes no specific transfer-pricing rules. However, it does contain general antiavoidance provisions to prevent the avoidance of tax through arrangements that are solely tax-motivated. Under these provisions, the Inland Revenue Department may ignore an arrangement and add an amount to chargeable income if it establishes that a transaction has the effect of avoiding or postponing tax liability.

**Debt-to-Equity Rules.** Malta does not impose any debt-to-equity requirements.

## F. Treaty Withholding Tax Rates

Under Maltese domestic tax law, dividends, interest, discounts, premiums and royalties paid to nonresidents are not subject to withholding tax. Interest and royalties paid to nonresidents are exempt from income tax in Malta if they are not effectively connected with a permanent establishment in Malta through which the nonresidents engage in a trade or business.

Under Malta's tax treaties, the maximum tax rates applicable to dividends paid by Maltese companies to persons resident in the other treaty countries do not exceed the tax rate payable by the recipient companies in Malta.

The following table provides the maximum withholding tax rates for dividends, interest and royalties under Malta's tax treaties.

	Dividends		Interest	Royalties
	A	B		
	%	%	%	%
Albania	15	5 (a)	5	5
Australia	15	15	15	10
Austria	15	15	5	10
Barbados	15	5 (a)	5	5
Belgium	15	15	10	10
Bulgaria	0	0	—	10
Canada	15	15	15	10
China	10	10	10	10
Croatia	5	5	0	0

	Dividends		Interest %	Royalties %
	A %	B %		
Cyprus	15	15	10	10
Czech Republic	5	5	0	5
Denmark	15	0 (a)	0	0
Egypt	10	10	10	12
Estonia	15	5 (a)	10	10
Finland	15	5 (a)	10	10
France	15	5 (a)	10	10
Germany	15	5 (a)	0	0
Hungary	15	5 (a)	10	10
Iceland	15	5 (a)	0	5
India	15	10 (a)	10	15
Italy	15	15	10	10
Korea	15	5 (a)	10	0
Kuwait	0	0	0	10
Latvia	10	5 (a)	10	10
Lebanon	5	5	0	5
Libya	15	15	15	15
Lithuania	15	5 (a)	10	10
Luxembourg	15	5 (a)	0	10
Malaysia	–	–	15	15
Morocco	6.25	10 (a)	10	10
Netherlands	15	5 (a)	10	10
Norway	15	15	10	10
Pakistan	– (b)	15 (a)	10	10
Poland	15	5 (a)	10	10
Portugal	15	10 (a)	10	10
Romania	5	5	5	5
San Marino	10	5 (a)	0	0
Slovak Republic	5	5	0	5
Slovenia	15	5	5	5
South Africa	5	5	10	10
Spain	5	0 (a)	0	0
Sweden	15	0 (a)	0	0
Syria	0	0	10	18
Tunisia	10	10	12	12
United Kingdom	–	–	10	10
Nontreaty countries	0	0	0	0

A Rate for minor shareholding.

B Rate for major shareholding.

(a) The following percentages are required for a major shareholding.

	Percentage of Shareholding (%)
Albania	25
Barbados	5
Denmark	25
Estonia	25
Finland	10
France	10
Germany	10
Hungary	25
Iceland	10
India	25
Korea	25
Latvia	25
Lithuania	25
Luxembourg	25
Morocco	25

	<b>Percentage of Shareholding (%)</b>
Netherlands	25
Pakistan	20
Poland	20
Portugal	25
San Marino	25
Slovenia	25
Spain	25
Sweden	10

- (b) The treaty does not provide a maximum tax rate for dividends paid on minor shareholdings.

Malta has signed agreements with Switzerland and the United States that relate to international shipping and air transport.

Malta has initialed or signed tax treaties with Greece, Ireland, Jordan, the Russian Federation, Singapore, Thailand, Turkey, Ukraine and the United Arab Emirates, but these treaties have not yet been ratified.

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## MAURITANIA

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*Please direct all inquiries regarding Mauritania to Mouhamadou-Moctar Faye of the Dakar, Senegal office (telephone: [221] (33) 849-2217; fax: [221] (33) 823-8032; e-mail: mouhamadou-moctar.faye@sn.ey.com).*

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### A. At a Glance

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	10
Interest	10
Royalties from Patents, Know-how, etc.	14 (c)
Directors' Fees	10
Payments for Services	14 (c)
Branch Remittance Tax	10 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	4

- (a) The minimum tax is 3.5% of annual turnover. However, the tax may not be less than MRO 240,000.  
 (b) The tax may be deferred (see Section B).  
 (c) Applicable to payments by residents to nonresidents. A tax treaty may reduce the rate applicable to nonresidents.  
 (d) See Section B.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Mauritanian companies are taxed on the territoriality principle. As a result, Mauritanian companies carrying on a trade or business outside Mauritania are not taxed in Mauritania on the related profits. Foreign companies with activities in Mauritania are subject to Mauritanian corporate tax on Mauritanian-source profits only.

**Tax Rates.** The regular corporate income tax rate is 25%. The minimum tax (Impôt Minimum Forfaitaire, or IMF) is 3.5% of turnover. However, the tax may not be less than MRO 240,000.

Profits realized in Mauritania by branches of foreign companies are deemed to be distributed and, consequently, are subject to a branch withholding tax of 10% on after-tax income.

The new investment code provides only for one preferential tax regime, which is available to companies producing goods or services for export exclusively and companies working exclusively for them.

**Capital Gains.** Capital gains are taxed at the regular corporate income tax rate. However, the tax may be deferred if the proceeds are used to acquire new fixed assets in Mauritania in the following three fiscal years.

**Administration.** The fiscal year is the calendar year. Tax returns must be filed by 31 March of the year following the fiscal year.

Companies must pay the IMF (see *Tax Rates* above) in two equal installments, which are due on 31 March and 30 June of the year following the tax year. Companies must pay any balance of tax due by 30 April.

**Dividends.** Dividends are subject to a 10% withholding tax, which may be a deductible expense if the recipient is subject to corporate income tax.

**Foreign Tax Relief.** Foreign tax credits are not allowed. Income subject to foreign tax that is not exempt from Mauritanian tax under the territoriality principle is taxable net of the foreign tax.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the rules contained in the National General Accounting Plan.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Interest paid on loans from shareholders to the extent that the rate exceeds the current rate of the central bank and all of the interest on shareholder loans if the capital of the company is not fully paid;
- Corporate income tax and IMF (see Section B);
- Certain specified charges; and
- Taxes, penalties, gifts and most liberalities (payments exceeding 0.5% of trading income that do not produce a compensatory benefit).

**Inventories.** Inventory is normally valued at the lower of cost or market value.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at maximum rates specified by the tax law. The following are some of the applicable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings	5
Office equipment	10
Motor vehicles	25
Plant and machinery	20

Certain industrial assets may be depreciated using the declining-balance method. The Mauritanian tax law does not allow accelerated depreciation methods.

**Relief for Tax Losses.** Losses may be carried forward for four years. Losses may not be carried back.

**Groups of Companies.** Fiscal integration of Mauritanian companies equivalent to a consolidated filing position is not allowed.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on sales of goods and services, and on imports and exports	
Standard rate	14
Business activity tax ( <i>patente</i> ); calculated based on the turnover of the business	Various
Registration duties, on transfers of real property or businesses	0.54 to 15
Social security contributions, on an employee's annual gross salary up to MRO 840,000; paid by	
Employer	15
Employee	1

#### **E. Foreign-Exchange Controls**

The Mauritanian currency is the ouguiya (MRO).

Exchange-control regulations exist in Mauritania for foreign financial transactions.

#### **F. Tax Treaties**

Mauritania has entered into double tax treaties with France and Senegal. It has signed double tax treaties with the Maghreb Arab Union and Tunisia, but the treaties have not yet been ratified.

## **MAURITIUS**

(Country Code 230)

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**A. At a Glance**

Corporate Income Tax Rate (%)	15 (a)
Capital Gains Tax Rate (%)	0 (a)
Branch Tax Rate (%)	15 (a)
Withholding Tax (%)	
Dividends	0
Interest	15 (b)
Royalties	10 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) See Section B.

(b) This withholding tax applies only if the interest is paid to a resident individual, a resident partnership or the estate of a deceased person who was resident in Mauritius if the aggregate amount of the loan exceeds Rs. 2 million. The withholding tax does not apply to interest received by a partnership that is exempt from tax under Part I of the Second Schedule to the Income Tax Act 1995.

(c) This withholding tax is imposed on residents and nonresidents. It does not apply if the payer is a corporation holding a Category 1 Global Business License under the Financial Services Act 2007.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies resident in Mauritius are subject to income tax on their worldwide income. Resident companies are companies incorporated in Mauritius and companies with their central management and control in Mauritius. If a nonresident company has a branch carrying on business in Mauritius, the nonresident company is subject to tax on the income of the branch.

**Rates of Corporate Income Tax.** For the year ending 30 June 2008, the corporate income tax rate is 15% of the annual taxable net profits.

In 2007, a special levy was introduced for banks. The levy does not apply if, in the preceding year, the bank had incurred a loss or if its book profit did not exceed 5% of its operating income. The levy equals the sum of 1.7% of the book profit and 0.5% of operating income. For purposes of the levy, the operating income is the sum of the net interest income and other income before deducting any noninterest expenses.

**Tax Advantages for Certain Companies.** Freeport companies, Information and Communication Technology Companies, companies engaged in offshore activities and companies engaged in spinning, weaving, dyeing or knitting may qualify for tax advantages.

*Freeport Companies.* The following special tax rules apply to Freeport companies:

- A private Freeport developer or Freeport operator that was licensed before 1 June 2002 and is engaged in specified manufacturing or processing activities is exempt from tax on sales made to persons outside Mauritius up to the income year ending 30 June 2009; and



- A private Freeport developer or Freeport operator that has obtained a license to carry out Freeport activities other than specified manufacturing or processing activities is exempt from tax up to the income year ending 30 June 2009.

*Information and Communication Technology Companies.* Information and Communication Technology (ICT) companies are classified as tax-incentive companies. If the investment certificate of an ICT company is issued before 30 September 2006 and if the ICT company is engaged in business-process outsourcing and back-office operations or in the operation of call centers or contact centers, the ICT company may elect within 60 days of the date of the issuance of its investment certificate to have two-thirds of its net income exempted from tax up to and including the income year ending 30 June 2012. This reduces the effective tax rate to 5% of taxable income. Income derived by other ICT companies from nonresidents is exempt from tax through the income year ending 30 June 2012. Income derived from residents is taxable at the incentive rate of 15%. Income derived from residents by a company that has been issued an investment certificate on or before 30 June 2005 is exempt from income tax through the income year ending 30 June 2008. Losses incurred during the exemption period may be carried forward to years following the expiration of the exemption period.

*Companies Engaging in Offshore Activities.* Offshore business activities may be conducted through companies holding a Global Business License 1 (GBL1 Companies) or a Global Business License 2 (GBL2 Companies). These activities must be conducted with nonresidents of Mauritius and in currencies other than the Mauritian rupee.

The tax law grants various tax credits to GBL1 Companies, including a foreign tax credit, underlying tax credit and tax-sparing credit. The foreign tax credit is generally the lower of the Mauritian tax and the foreign tax. However, the Foreign Tax Credit Regulation provides for a presumed foreign tax credit equal to 80% of the Mauritian tax chargeable on foreign-source income (including local-source income derived in the course of the qualifying activity) if no written evidence is produced in support of the payment of foreign tax. This reduces the effective tax rate to 3% of chargeable income. Dividends paid to residents and nonresidents and royalties paid by GBL1 Companies to nonresidents are exempt from tax. Interest paid by GBL1 Companies to nonresidents who do not have a place of business in Mauritius is exempt from tax. GBL1 Companies may be considered residents of Mauritius for purposes of double tax treaties.

GBL2 Companies are regulated by the Companies Act, 2001 and the Financial Services Act, 2007. To qualify as a GBL2 Company, the company must be beneficially owned by nonresidents, operate exclusively outside Mauritius and meet certain other requirements. GBL2 Companies are exempt from corporate income tax and all other taxes and duties. Dividends paid by GBL2 Companies are exempt from income tax. Interest, royalties and other payments made by GBL2 Companies to nonresidents are exempt from income tax. GBL2 Companies are subject to a more flexible regime than GBL1 Companies, but they do not benefit from double tax treaties.

*Companies Engaged in Qualifying Activities.* Companies engaged in dyeing, knitting, spinning, or weaving activities that begin their operations before 30 June 2006 are exempt from income tax for a period of up to 10 income years. If a company begins operations during the period of 1 July 2006 through 30 June 2008, its income is exempt from income tax up to and including the income year ending 30 June 2016. Losses incurred during the exemption period may be carried forward to years following the expiration of the exemption period.

A company that subscribes to the stated capital of a spinning company on or before 30 June 2008 for an amount of Rs. 60 million or more is granted a tax credit equal to 60% of the investment in share capital over a period of either four or six income years. This tax credit is also granted to a company subscribing to the stated capital of a company engaged in dyeing, knitting and weaving activities on or before 30 June 2008 for an amount of Rs. 10 million or more. The credit is available beginning in the income year preceding the income year in which the shares are acquired and is spread equally over the four- or six-year period. Any unused portion of the tax credit may be carried forward to subsequent income years, subject to a maximum period of five consecutive income years beginning with the income year of the investment.

**Alternative Minimum Tax.** The Alternative Minimum Tax (AMT) applies if a company either declares a dividend or distributes any shares instead of dividends and if the tax payable is less than 7.5% of the book profit. The AMT equals the lower of 7.5% of the book profit or 10% of the sum of any dividends declared and amounts distributed instead of dividends. The tax payable by the company is the higher of the AMT or the tax payable under the normal rules.

For purposes of the AMT calculation, capital gains (losses) or revaluation of fixed assets, dividends received from companies resident in Mauritius and trading profits (losses) from the sale or revaluation of securities are excluded in the computation of the book profit. In addition a foreign tax credit is not subtracted in computing the tax payable.

The AMT does not apply to companies that are exempt from tax and GBL1 Companies.

**Capital Gains.** Capital gains are not subject to income tax.

**Withholding Taxes.** The 2006 Finance Act introduced withholding taxes for certain payments. The tax withheld at source is an interim tax payment that may or may not be the final tax liability. Amounts deducted are credited to the final tax liability of the taxpayer for the relevant tax year.

The following are the withholding tax rates.

<b>Payment</b>	<b>Rate (%)</b>
Interest	15 (a)
Royalties	10 (b)
Rent for buildings	5
Payments to contractors and subcontractors	0.75
Payments to architects, engineers, land surveyors, project managers in the construction industry, property valuers and quantity surveyors	3

- (a) This withholding tax applies only if the interest is paid to a resident individual, a resident partnership or the estate of a deceased person who was resident in Mauritius if the aggregate amount of the loan exceeds Rs. 2 million. The withholding tax does not apply to interest received by a partnership that is exempt from tax under Part I of the Second Schedule to the Income Tax Act 1995.
- (b) This withholding tax is imposed on residents and nonresidents. It does not apply if the payer is a corporation holding a Category 1 Global Business License under the Financial Services Act 2007.

If a recipient of a payment proves to the Director-General of the Mauritius Revenue Authority that the recipient is not liable for tax, the Director-General may, by written notice to the payer, direct that no tax be withheld from the payment to the recipient.

**Administration.** The normal income year is 1 July to 30 June of the year preceding the year of assessment. Companies may choose a financial year-end other than 30 June for tax purposes.

Companies are required to file their tax returns within six months of their year-end.

Any tax payable in accordance with the annual return must be paid at the time of filing the return. The Advance Payment System (APS), which is effective from 1 July 2008, requires companies to pay tax on a quarterly basis. For purposes of the APS, companies can either use the taxable profits of the preceding tax year or the results of the relevant quarter.

If a payment is late or an incorrect return is filed, a penalty of 5% of the tax payable is imposed. Interest at a rate of 1% for each month or part of a month the tax remains unpaid also applies. In addition, a penalty of Rs. 2,000 is imposed for each month or part of a month that the annual tax return is late. The penalty is limited to a maximum amount of Rs. 20,000.

**Dividends.** Dividends paid to residents and nonresidents are exempt from tax.

**Foreign Tax Relief.** Residents of Mauritius may claim a foreign tax credit (FTC), regardless of whether they may claim other tax credits. The FTC equals the lower of the Mauritian tax liability and the amount of the foreign taxes. In computing the FTC, all foreign-source income may be pooled and expenses may be freely allocated between local and foreign-source income. An underlying FTC is also available if the residents, including individuals and trusts, own directly or indirectly at least 5% of the share capital of the foreign company. The underlying FTC is extended to all previous tiers. The FTC takes into account any tax sparing credits granted to the payer of the dividends.

### C. Determination of Trading Income

**General.** Taxable income of resident companies and foreign branches comprises gross income less cost of goods sold and expenses incurred wholly and exclusively in the production of income, unless specifically excluded by law. Income and expenses are determined in accordance with generally accepted accounting principles.

**Inventories.** Inventories may be valued according to accounting standards. However, the income tax rules provide that the last-in, first-out (LIFO) method of valuation may not be used.

**Provisions.** No provisions are allowed for tax purposes.

**Tax Depreciation.** No deduction is allowed for book depreciation of fixed assets, but statutory depreciation (capital allowances) is granted. Mauritian law provides for investment allowances and annual allowances. However, the investment allowance and the additional investment allowances have been repealed and are now available only in limited cases under transitional rules.

Under the transitional rules, a company whose application has been approved under the Investment Promotion Act, or whose proposed activity has been approved under any other enactment, may elect by irrevocable notice in writing to the Director-General to claim annual allowances for capital expenditure incurred on or before 30 June 2009 at the rates prevailing on 30 June 2006. Manufacturing companies may claim additional investment allowances on state-of-the-art technological equipment for acquisitions made in the years ending 30 June 2007 and 30 June 2008. ICT companies may claim additional investment allowances on computer equipment and plant and machinery for acquisitions made on or before 30 June 2008.

The following investment allowances are provided.

<b>Allowance</b>	<b>Rate (%)</b>
Investment allowance on certain new assets, including industrial buildings, office equipment, plant and machinery, and buses with a seating capacity of at least 30	25
Additional investment allowance for a manufacturing company that has incurred capital expenditure on the acquisition of state-of-the-art technological equipment in the year ending 30 June 2008	10
Additional investment allowance for an ICT company that incurs capital expenditure on the acquisition of new plant and machinery or computer software	25

The following are the rates of annual allowances computed using the declining-balance method.

<b>Asset</b>	<b>Rate (%)</b>
Hotels	30
Plant and machinery	35
Heavy equipment (such as agricultural tractors or excavators)	35
Computers and high precision equipment	50
Motor vehicles	25
Setting up of golf courses	15

The following are the rates of annual allowances computed using the straight-line method.

<b>Asset</b>	<b>Rate (%)</b>
Commercial premises	5
Industrial premises excluding hotels	5
Any item of a capital nature not listed above that is subject to depreciation under the normal accounting principles	5

<b>Asset</b>	<b>Rate (%)</b>
Plant and machinery costing Rs. 30,000 or less	100
Aircraft and aircraft simulators leased by aircraft leasing companies	100

Capital allowances are subject to recapture on the sale of an asset to the extent the sales price exceeds the tax value after depreciation. Amounts recaptured are included in ordinary income and are subject to tax at the normal tax rate. To the extent that the sales price is lower than the depreciated value, an additional allowance is granted.

**Relief for Losses.** Losses can be offset against future corporate income in the following five income years. Losses attributable to annual allowances can be carried forward indefinitely. Losses may not be carried back.

If a company takes over a company engaged in manufacturing activities or if two or more companies engaged in manufacturing activities merge into one company, any unrelieved losses of the acquired company or merging companies may be transferred to the acquirer or to the company resulting from the merger in the income year of the takeover or merger, subject to certain conditions relating to the safeguarding of employment that may be established by the Minister of Finance. The loss transferred is withdrawn if, within three years from the date of the takeover or merger, more than 50% of the employees are made redundant.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax	15
National pension fund, a statutory savings plan for employees' old-age retirement; monthly contribution imposed on gross salary; paid by Employer, limited to Rs. 541.50	6
Employee, limited to Rs. 270.50	3
Solidarity levy; imposed on taxable persons engaged in the business of hotel, hotel management and tour operation; applicable for the four income years ending 30 June 2010; levied on taxable supplies of an operator net of management fee paid to a hotel management company in Mauritius; levy is not payable if the operator has incurred a loss or if the profit of the operator before tax does not exceed 5% of turnover; levy is deductible for corporate income tax purposes	0.85
Land transfer tax; based on the value of the immovable property transferred; payable by transferor	5/10
Tax on transfer of leasehold rights in state land; based on the open market value of the leasehold rights; payable equally by the transferor and the transferee	20
Registration duty; payable on the registration of certain transactions, such as the sale of land; based on the value of the property transferred; payable by the transferee; certain transactions are not subject to the duty	5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Exchange Control Act was suspended in 1993. Consequently, approval of the Bank of Mauritius is no longer required for transactions involving foreign exchange.

**Antiavoidance Legislation.** Antiavoidance provisions apply to interest on debentures issued by reference to shares, excessive remuneration to shareholders or directors, benefits to shareholders, excessive management expenses, leases with inadequate rent, rights over income retained and other transactions designed to avoid tax liability. Certain of these items are discussed below.

*Interest on Debentures Issued by Reference to Shares.* If a company issues debentures in the proportion of shares held by each shareholder, the interest on the debentures is treated as a dividend and is therefore not an allowable deduction for the company. The 2004 Finance Act provides that such interest on the debentures is not treated as a dividend for the shareholder.

*Benefits to Shareholders.* If a benefit of any nature, whether in money or money's worth, is granted by a company to a shareholder or a party related to the shareholder, the value of the benefit is deemed to be a taxable benefit in the hands of the shareholder or the related party.

*Rights Over Income Retained.* If a person transfers property or any right to income to a related party and retains or obtains power to enjoy income from the property or the right, the income is deemed to be derived by the transferor.

## F. Treaty Withholding Tax Rates

Under Mauritian domestic law, dividends paid to residents and nonresidents and royalties paid by GBLI Companies (see Section B) to nonresidents are exempt from tax. Interest payments are exempt from tax if they are paid by Mauritian banks to nonresident banks or if they are paid by GBLI Companies to nonresidents that do not have a place of business in Mauritius. The table below lists the tax rates for dividends, interest and royalties under the tax treaties entered into by Mauritius. However, Mauritian domestic law prevails if it exempts the payments from tax.

Recipient's Country of Residence	Dividends %	Interest %	Royalties %
Barbados	5	5	5
Belgium	5 (i)	0/10	0
Botswana	5 (j)	12	12.5
China	5	10 (f)	10
Croatia	0	0	0
Cyprus	0	0	0
France	5 (a)	25 (f)	15 (g)
Germany	5 (b)	25 (f)	15
India	5 (a)	25 (f)	15
Indonesia (q)	5/10	10	10
Italy	5 (b)	25 (f)	15
Kuwait	0	0	10
Lesotho	10	10	10
Luxembourg	5 (a)	0	0
Madagascar	5 (h)	10	5

<b>Recipient's Country of Residence</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties %</b>
Malaysia	5 (a)	15 (f)	15
Mozambique	8/10/15	8 (f)	5
Namibia	5/10	10 (f)	5
Nepal	5/10/15 (o)	10/15 (p)	15
Oman	0	0	0
Pakistan	10	10	12.5
Russian Federation (l)	5 (k)	0	0
Rwanda	0	0	0
Senegal	0	0	0
Seychelles	0	0	0
Singapore	0	0	0
South Africa	5 (a)	0	0
Sri Lanka	10 (a)	10	10
Swaziland	7.5	5	7.5
Sweden	5 (a)	15 (f)	15
Thailand	10	10/15	5/15
Uganda	10	10	10
United Arab Emirates (i)	0	0	0
United Kingdom	10 (c)	25 (f)	15 (d)
Zimbabwe	10 (e)	10 (f)	15
Nontreaty countries	0	0/15 (m)	0/15 (n)

- (a) Applicable if the recipient has a direct shareholding of at least 10% of the capital of the Mauritian company; otherwise, the rate is 15%.
- (b) Applicable if the recipient has a direct shareholding of at least 25% of the capital of the Mauritian company; otherwise, the rate is 15%.
- (c) Applicable if the recipient has a direct or indirect shareholding of at least 10% of the capital of the Mauritian company; otherwise, the rate is 15%.
- (d) The reduced rate applies only if the royalties are subject to tax in the United Kingdom.
- (e) Applicable if the recipient controls directly or indirectly 25% of the voting power of the Mauritian company; otherwise, the rate is 20%.
- (f) The rate is 0% if the interest is paid to a bank resident in the treaty country (subject to additional conditions) and, under the France treaty, if the loan is made or guaranteed by the Banque Française du Commerce Extérieur.
- (g) The rate is 0% for literary, artistic or scientific copyright royalties and for royalties for the use of motion picture films or works recorded for broadcasting or television.
- (h) Applicable if the recipient is the beneficial owner of the dividends and if the payer of the dividends is a venture capital company; otherwise, the rate is 10%.
- (i) Applicable if the recipient has a direct or indirect shareholding of at least 10% of the capital of the Mauritian company; otherwise, the rate is 10%.
- (j) Applicable if the recipient has a direct or indirect shareholding of at least 25% of the capital of the Mauritian company; otherwise, the rate is 10%.
- (k) Applicable if the recipient has invested at least US\$500,000 in the authorized capital of the payer of the dividends; otherwise, the rate is 10%.
- (l) This treaty has been signed, but it has not yet been ratified.
- (m) Interest paid by GBL1 Companies to nonresidents or by Mauritian banks to nonresident banks is exempt. Interest paid by other resident companies to nonresidents is taxed at a rate of 15%.
- (n) Royalties paid by GBL1 Companies to nonresidents are exempt from tax. Royalties paid by other companies to nonresident companies are subject to tax at a rate of 15%. Under the law, the payer withholds a 10% tax from royalties. The additional 5% tax is paid when the taxpayer submits the annual tax return.
- (o) The 5% rate applies if the recipient of the dividends holds directly at least 15% of the capital of the payer. The 10% rate applies if the recipient of the dividends holds directly at least 10%, but less than 15%, of the capital of the payer. The 15% rate applies to other dividends.
- (p) The 10% rate applies if the recipient of the interest is a financial institution or an insurance company. The 15% rate applies to other interest payments.
- (q) This treaty is no longer in force as of the income year ended 30 June 2006.

Mauritius has initialed tax treaties with Bangladesh, Malawi, Nigeria, Tunisia, Vietnam and Zambia. It is currently negotiating tax treaties with Canada, the Czech Republic, Egypt, Greece, Iran and Portugal.

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**A. At a Glance**

Corporate Income Tax Rate (%)	28
Capital Gains Tax Rate (%)	28
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	0

Interest	
Paid on Negotiable Instruments	10 (a)
Paid to Banks	10 (a)(b)
Paid to Machinery Suppliers	21 (a)
Paid to Others	28 (a)
Royalties	
From Patents and Trademarks	28 (a)
From Know-how and Technical Assistance	25 (a)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

(a) This is a final tax applicable to nonresidents. Payments to tax havens are generally subject to a 40% withholding tax.

(b) A reduced rate of 4.9% is granted each year to banks resident in treaty countries.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporations resident in Mexico are taxable on their worldwide income from all sources, including profits from business and property. A nonresident corporation in Mexico is subject to profits tax on income earned from carrying on business in Mexico. Corporations are considered residents of Mexico if they are established under Mexican law or if their principal place of management is located in Mexico.

Corporations are taxed in Mexico only by the federal government. Mexico has a general system for taxing corporate income, ensuring that all of a corporation's earnings are taxed only once, in the fiscal year in which the profits are obtained.

The income tax law recognizes the effects of inflation on the following items and transactions:

- Depreciation of fixed assets;
- Cost on sales of fixed assets;
- Sales of capital stock (shares);
- Monetary gains and losses; and
- Tax loss carryforwards.

Investment in capital stock may be indexed at the time of capital stock reductions or liquidation. Taxes are also indexed for inflation in certain circumstances.

**Tax Rate.** For 2008, corporations are subject to federal corporate income tax at a rate of 28%.

**Flat Rate Business Tax.** Flat Rate Business Tax (IETU) has been introduced as a minimum tax to replace the Minimum Tax on Assets. The rate of IETU is 17% (16.5% for 2008 and 17% for 2009). This new tax is levied on broader taxable income and on a cash basis rather than an accrual basis. The tax applies only to Mexican residents and to nonresidents that have a permanent establishment in Mexico.

IETU is levied on the difference between cash collections from the sales of goods, rendering of services and rental of property and cash payments for the acquisition of goods, services and rentals. Income tax paid can be credited against the IETU. Certain

types of income are not taxable and certain types of expenses are not deductible. Other types of expenses are not deductible but may be credited against the tax calculated. IETU paid in excess of income tax for any tax year cannot be carried over.

**Capital Gains.** Mexican tax law treats capital gains as normal income and taxes them at regular corporate tax rates. However, to determine the deductible basis for sales of real estate, fixed assets and shares, the law allows for indexation of the original cost for inflation.

**Administration.** The tax period always ends on 31 December and cannot exceed 12 months. The tax return must be filed by the end of the third month following the tax year-end. Monthly tax installments must be paid during the corporation's tax year.

**Dividends.** Dividends received by resident and nonresident shareholders from a Mexican corporation are not subject to corporate income tax if the earnings were already subject to corporate income tax and if the distributing corporation has sufficient accumulation in its "net tax profit" (CUFIN) account to cover the dividend. If the accumulated amount is not sufficient, the dividends are taxed at the corporate level at a rate of 28%. The following is an illustration of how to compute the net tax profit for the CUFIN account.

	<b>Mex\$</b>
Corporate taxable income	1,000
Income tax (28%)	(280)
Nondeductible profit sharing to employees (estimated)	(150)
Nondeductible expenses	<u>(70)</u>
Net tax profit (not subject to corporate income tax on distribution)	<u><u>500</u></u>

Income tax paid on distributed profits may be credited against corporate income tax in the following three years.

Similar rules apply to remittances abroad by branches of foreign corporations.

### **C. Determination of Trading Income**

**General.** Taxable profits are computed in accordance with generally accepted accounting principles, with the following exceptions:

- Nondeductibility of penalties and unauthorized donations;
- Nondeductibility of increases to reserves for bad debts, obsolescence, contingencies, indemnities and so forth; and
- Monetary gain on debts, and monetary loss on credits, to recognize the effect of inflation.

Employee profit-sharing (see Section D) is effectively deductible.

**Inventories.** Instead of deducting the normal cost of sales, inventory purchases, labor costs and overhead expenses are deductible each fiscal year. However, beginning in 2005, the cost of goods sold is deductible instead of inventory purchases. Complex rules apply with respect to this measure.

**Depreciation.** The straight-line method is used to depreciate tangible fixed assets and to amortize intangible assets. Depreciation must

be computed using the annual percentages set by law. The depreciation of new assets must be computed on a proportional basis relating to the months in which the assets are used. Depreciation is computed on original cost of fixed assets, with the amount of depreciation indexed for inflation as measured by price indices.

The following are the maximum annual depreciation rates for certain types of assets.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	5
Motor vehicles	25
Office equipment	10
Computers	
Mainframe equipment	30
Peripheral equipment	30
Plant and machinery	10
Environmental machinery and equipment	100

Companies may elect to claim an immediate deduction equal to a percentage of their original investments in assets rather than calculate depreciation based on the useful lives of the assets. However, this option is not available for certain assets and in certain geographical areas.

**Relief for Losses.** Business losses may be carried forward for 10 years.

**Groups of Companies.** A Mexican holding company has the option of filing a consolidated return including the tax results of its Mexican subsidiaries. This option is subject to several rules and limitations.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on any supply of goods or services, excluding exports, and on imports	
General rate	15
Border regions	10
Certain foods and medicines	0
Real estate acquisition tax; local tax on market value of real estate transferred (approximate rates)	2 to 4.5
State tax on salaries	2 to 2.5
Residence tax, on each employee's salary (approximate rate)	5
Employee profit sharing, on taxable profits excluding the effect of inflation (loss carryforwards may not be deducted)	10
Social security contributions, on salaries up to a specified amount; paid by	
Employer (approximate rate)	15
Employee (approximate rate)	4

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Mexico has no foreign-exchange controls.

**Transfer Pricing.** Mexico has transfer-pricing rules. Acceptable transfer-pricing methods include the comparable uncontrolled price method, the resale price method, the cost-plus method, the profit-split method, the residual profit-split method and the transactional net-margin method. In certain cases, specific appraisals are used. Transactions between related parties are subject to greater scrutiny. It may be possible to reach transfer-pricing agreements in advance with the tax authorities. These agreements may apply for a period of up to five years.

**Debt-to-Equity Rules.** Interest deductions may be disallowed if the debt-to-equity ratio exceeds 3 to 1.

## F. Treaty Withholding Tax Rates

	Dividends (I) %	Interest %	Patent and Know-how Royalties %
Australia	0/15 (k)	10/15 (e)	10
Austria	5/10 (d)	10	10
Belgium	5/15 (a)	10/15 (t)	10
Brazil	10/15 (a)(b)	15 (b)	15 (b)
Canada	10/15 (a)	10/15 (b)	10/15 (b)(g)
Chile	5/10 (u)	15 (b)	15 (b)
China	5	10	10
Czech Republic	10	10	10
Denmark	0/15 (a)	5/15 (n)	10
Ecuador	5	10/15 (m)	10
Finland	0	10/15 (h)	10
France	0/5 (c)	5/10/15 (b)(h)	10/15 (b)
Germany	5/15 (d)	10/15 (e)	10
Greece	10	10	10
Indonesia	10	10	10
Ireland	5/10 (d)	5/10 (n)	10
Israel	5/10 (f)	10	10
Italy	15	10/15 (b)	15
Japan	0/5/15 (o)	10/15 (e)	10
Korea	0/15 (k)	5/15 (n)	10
Luxembourg	5/15	10	10
Netherlands	0/5/15 (d)(s)	5/10/15 (p)	10
New Zealand	15 (b)	10	10
Norway	0/15 (a)	10/15 (t)	10
Poland	5/15 (a)	10/15 (e)	10
Portugal	10	10	10
Romania	10 (d)	15	15
Singapore	0	5/15 (n)	10
Spain	5/15 (a)	5/10/15 (b)(h)(t)	10 (b)(g)
Sweden	5/15 (d)	10/15 (q)	10
Switzerland	5/15 (a)	10/15 (t)	10
United Kingdom	0	5/10/15 (j)	10
United States	5/10 (d)	4.9/10/15 (r)	10
Nontreaty countries	0	4.9/10/21/28 (i)	25/28 (i)

- (a) The lower rate applies if the recipient is a corporation owning at least 25% (20% under the Brazil treaty) of the shares of the payer.
- (b) These treaties have a most favorable nation (MFN) clause with respect to interest and/or royalties. Under the MFN clause in the Canada treaty, the 15% rate for interest or royalties may be reduced to as low as 10% if Mexico enters into a tax treaty with a member of the Organization for Economic Cooperation and Development (OECD) that provides for a withholding tax rate of less than 15% for interest or royalties. Under the MFN clause in the Chile treaty, the withholding tax rate for interest may be reduced to 5% for banks or 10% for other recipients and the withholding tax rate for royalties may be reduced to 10%, if Chile enters into a tax treaty with another country that provides for a lower withholding tax rate than 15% for such payments. Under the MFN clause in the France treaty, the withholding tax rate for interest and royalties is reduced if Mexico enters into a tax treaty with an OECD member that provides for withholding tax rates that are lower than the rates under the Mexico-France treaty. However, the rate may not be lower than 10% if the OECD member country is not a member of the European Union (EU). Under the Italy treaty, the MFN clause applies only to interest. It may reduce the withholding tax rate for interest to as low as 10% only if Mexico enters into a treaty with an EU country that provides for a withholding tax rate for interest of less than 15%. Under the MFN clause in the Spain treaty, the withholding tax rates for interest and royalties may be reduced if Mexico enters into a tax treaty with an EU country that provides for withholding tax rates that are lower than the rates under the Mexico-Spain treaty. Under the Brazil treaty, if this country agrees with another country regarding a lower rate for dividends, interest or royalties, such rate will apply. For interest and royalties, the applicable rate may not be lower than 4.9% and 10%, respectively. Under the New Zealand treaty, if this country agrees with another country regarding a lower rate for dividends, such rate will apply. The standard rate for interest and for patent and know-how royalties under all of the above treaties is generally 15%. However, as a result of the operation of the MFN clause, the lower rates listed in the table may apply in certain circumstances.
- (c) The 0% rate applies if the recipient of the dividends is the effective beneficiary of the dividends. The 5% rate applies if the recipient is a company that is resident in France and if more than 50% of such recipient is owned by residents of countries other than France or Mexico.
- (d) The 5% rate applies if the recipient is a corporation owning at least 10% of the shares of the payer.
- (e) The 10% rate applies to interest derived from loans granted by banks and insurance companies. Under the Germany treaty, the 10% rate also applies to interest paid to pension funds. Under the Australia and Japan treaties, the 10% rate also applies to interest paid on bonds or with respect to sales by suppliers of machinery and equipment. Under the Poland treaty, the 10% rate also applies to interest paid on publicly traded securities.
- (f) The 5% rate applies if the recipient is a corporation that owns at least 10% of the shares of the payer and if the tax levied in Israel is not less than the corporate tax rate.
- (g) The effective beneficiary of royalties is subject to withholding tax on the gross payments. Royalties on cultural works (literature, music and artistic works other than films for movies or television) are not subject to withholding tax if they are taxed in the recipient's country.
- (h) A 10% rate applies to interest paid on bank loans or publicly traded bonds, as well as to interest paid with respect to sales by suppliers of machinery and equipment.
- (i) See Section A and the applicable footnotes in the section.
- (j) The 5% rate applies if the beneficial owner of the interest is a bank or insurance company or if the interest is derived from bonds or securities that are regularly and substantially traded on a recognized securities market. The 10% rate applies to interest paid by a bank or by a purchaser with respect to a sale on credit of machinery if the seller is the beneficial owner of the interest. The 15% rate applies to other interest.
- (k) The 0% rate applies if the recipient is a corporation owning at least 10% of the shares of the payer.
- (l) Dividends are not subject to withholding tax under Mexican domestic law.
- (m) Beginning in the sixth year the treaty is in effect, the 15% rate is reduced to 10% if the beneficial owner of the interest is a bank. For the first five years, however, the 15% rate applies to such interest.
- (n) The 5% rate applies if the beneficial owner of the interest is a bank.
- (o) The 5% rate applies if the recipient is a corporation owning at least 25% of the shares of the payer. The 0% rate applies if the condition described in the preceding sentence is satisfied and if both of the following conditions are satisfied:

- The recipient's shares are regularly traded on a recognized stock exchange.
  - More than 50% of the recipient's shares are owned by one or any combination of the following:
    - The state of residence of the recipient;
    - Individuals resident in the state of residence of the recipient; and
    - Corporations resident in the state of residence of the recipient if their shares are traded on a recognized stock exchange or if more than 50% of their shares are owned by individuals resident in the state of residence of the recipient.
- (p) The 5% rate applies if the interest is derived from loans granted by banks or insurance companies or if the interest is derived from bonds or securities that are regularly and substantially traded on a recognized securities market. The 10% rate applies to interest paid by banks or by purchasers with respect to sales on credit of machinery or equipment. The 15% rate applies to other interest.
- (q) The 10% rate applies to interest derived from loans granted by banks.
- (r) The 4.9% rate applies if the beneficial owner of the interest is a bank or insurance company or if the interest is derived from bonds or securities that are regularly and substantially traded on a recognized securities market. The 10% rate applies to interest paid by banks or by purchasers with respect to sales on credit of machinery and equipment. The 15% rate applies to other interest.
- (s) Under a protocol to the treaty with the Netherlands, the 5% rate is reduced to 0% if the dividends are paid on a shareholding that qualifies for the participation exemption under the corporate tax law of the Netherlands.
- (t) The 10% rate applies if the beneficial owner of the interest is a bank.
- (u) The 5% rate applies if the recipient is a corporation owning at least 20% of the shares of the payer.

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### A. At a Glance

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0 (a)
Branch Tax Rate (%)	0
Withholding Tax (%)	
Dividends	15 (b)
Interest (c)(d)	
Payments to Residents	0
Payments to Nonresidents	10
Royalties	10/15 (d)(e)
Services	5/10 (f)
Insurance Premiums	10 (g)
Winnings from Gambling	10 (h)
Nondeductible Payments	15 (i)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (j)



- (a) See Section B.
- (b) The 15% rate applies to dividends paid to nonresidents and to resident individuals.
- (c) Interest on deposits and securities of individuals is not taxable until 2010. Interest on bank deposits or corporate bonds of legal entities is not taxable until 2010, if the deposits are made for a period of more than three years or if the bonds are issued for a period of more than three years. Interest on state securities is not taxable until 1 January 2015.
- (d) Resident recipients of interest and royalties include such payments in taxable income, which is subject to corporate income tax at the standard rate of 0%.
- (e) The 10% withholding tax rate applies to payments to nonresidents. The 15% withholding tax rate applies to payments to resident individuals.
- (f) The 10% rate applies to services rendered by nonresidents. The 10% rate also applies to rent paid to individuals, except for rent paid for agricultural land, and to amounts paid to individuals with respect to advertising campaigns. The 5% rate applies to certain payments made to resident individuals.
- (g) This withholding tax applies to insurance premiums paid to nonresidents.
- (h) This withholding tax applies to winnings from gambling paid to nonresidents and residents.
- (i) This withholding tax applies to monetary and nonmonetary payments that are not deductible for corporate income tax purposes to resident individuals and to nonresident legal entities and individuals.
- (j) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income. Resident companies are companies with activities managed or organized in Moldova (an activity is organized in Moldova if it is carried out by a company that is registered in Moldova as a legal entity) and companies that carry out their business activities primarily in Moldova.

Permanent establishments of nonresident companies in Moldova are subject to tax on their income from Moldovan sources. For tax purposes, permanent establishments are considered to be resident entities.

**Rate of Corporate Income Tax.** Effective from 1 January 2008, the standard corporate income tax rate for resident companies is 0%.

The obligation to correctly determine taxable income remains in effect on 1 January 2008 even though the corporate income tax rate is reduced to 0%.

### Tax Incentives

*Companies with Significant Investments in Their Share Capital or Significant Amounts of Capital Expenditure.* On entering into a corporate income tax agreement with the tax authorities, companies that have significant investments in their share capital or make significant amounts of capital expenditure may benefit from one of the tax exemptions described below. Although, effective from 1 January 2008, the corporate income tax rate is 0%, these corporate tax exemptions may become relevant if a higher rate replaces the 0% tax rate.

A 50% reduction of the standard corporate income tax rate may be granted for a five-year period if all of the following requirements are met:

- The investment in the company's share capital or the company's capital expenditure exceeds US\$250,000;
- The company uses at least 80% of the amount of the tax reduction for the development of its own production or services, or for the development of sectors of the Moldovan economy;

- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

A three-year exemption from corporate income tax may be granted if all of the following requirements are met:

- The investment in the company's share capital or the company's capital expenditure exceeds US\$2,000,000;
- The company uses 80% of the exempt income for the development of its own production or services, or for development of sectors of the Moldovan economy;
- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

A three-year exemption from corporate income tax may be granted if all of the following requirements are met:

- The investment in the company's share capital or the company's capital expenditure exceeds US\$5,000,000;
- The company uses 50% of the exempt income for the development of its own production or services, or for development of sectors of the Moldovan economy;
- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

A three-year exemption from corporate income tax may be granted if all of the following requirements are met:

- The investment in the company's share capital or the company's capital expenditure exceeds US\$10,000,000;
- The company uses 25% of the exempt income for the development of its own production or services, or for development of sectors of the Moldovan economy;
- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

A four-year exemption from corporate income tax may be granted if all of the following requirements are met:

- The investment in the company's share capital or the company's capital expenditure exceeds US\$20,000,000;
- The company uses 10% of the exempt income for the development of its own production or services, or for development of sectors of the Moldovan economy;
- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

A four-year exemption from corporate income tax may be granted if all of the following requirements are met:

- The investment in the company's share capital or capital expenditure exceeds US\$50,000,000;
- The company does not have any liabilities to the budget; and
- The company has not previously benefited from similar corporate income tax exemptions.

On the expiration of the tax exemption period, companies qualifying for one of the tax exemptions listed above may apply for an additional corporate income tax exemption of three years if the

investment in the company's share capital or the company's capital expenditures made during this additional exemption period exceeds US\$10,000,000. This additional incentive is not available to companies qualifying for the 50% tax reduction described above.

*Software Companies.* Companies that principally engage in software development qualify for a five-year exemption from corporate income tax if the following requirements are met:

- The income from software development exceeds 50% of the company income from sales;
- The company does not have any liabilities to the budget and during the period of corporate income tax exemptions, any delay in the payment of liabilities to the budget does not exceed 30 calendar days; and
- The company has not previously benefited from corporate income tax exemptions.

*Free-Trade Zones.* Residents of free-trade zones benefit from the following incentives:

- A 50% reduction of the standard corporate profits tax rate on income derived from the exportation outside Moldova of goods originating in the free-trade zone;
- A 75% reduction of the standard corporate profits tax rate on income other than that indicated in the preceding bullet;
- A three-year exemption from corporate profits tax on income derived from the exportation of goods originating in a free-trade zone, beginning with the quarter following the quarter in which investments made in fixed assets or to develop the region reach US\$1 million; and
- A five-year exemption from corporate profits tax on income derived from the exportation of goods originating in a free-trade zone, beginning with the quarter following the quarter in which investments made in fixed assets or to develop the region reach US\$5 million.

*Small and Medium-Sized Enterprises.* In general, small and medium-sized enterprises (SMEs) are exempt from corporate income tax for a period of three years. However, this exemption does not apply to the following SMEs:

- SMEs with a dominant position in the market;
- SMEs in which 35% of the share capital is held by non-SMEs, excluding nonprofit organizations;
- SMEs importing or producing goods subject to excise taxes;
- Trust or insurance companies;
- Banks, micro-financing organizations, savings-borrowings associations and other financial institutions;
- Investment funds;
- Pawn shops and currency-exchange companies;
- Gambling companies; and
- Agricultural companies that benefit from other specific corporate profits tax exemptions.

On the expiration of the three-year exemption period, SMEs may apply for a 35% reduction in the existing corporate income tax rate for a period of two years.

*Commercial Banks.* Commercial banks providing loans that finance capital investments in specified activities (see next paragraph) benefit from the following incentives:

- Exemption from corporate income tax on income earned from loans granted for more than three years; and
- A 50% reduction of corporate income tax on income earned from loans granted for a period of two to three years.

The corporate income tax incentives mentioned in the preceding paragraph are granted to commercial banks financing capital investments in the following activities:

- Acquisition of fixed assets for use in a business activity, contractor's works and engineering services;
- Acquisition and processing of agricultural products;
- Designing, development, mastering and implementation of new techniques and technologies;
- Restructuring of production process technologies;
- Planting and renewal of perennial plantations; and
- Alcoholic aging of cognacs, raw material wine used to produce classic wines saturated with carbon dioxide and high-quality wines.

**Capital Gains.** Capital gains and losses on sales, exchanges or other transfers of capital assets are equal to the difference between amounts received and the cost bases of the assets. The amount of capital gains subject to income tax in a tax year equals 50% of the excess of capital gains over capital losses. Net capital losses may be carried forward to offset capital gains in the following five years. Effective from 1 January 2008, the corporate income tax rate on capital gains is 0%.

**Administration.** The tax year is the calendar year. A company may not elect a different tax year.

The corporate income tax return must be filed by 31 March of the year following the tax year.

An amended tax return can be filed to correct errors contained in the original tax return. If the errors caused insufficient taxable income to be reported in the original return, the company must specify appropriate penalties and fines in the amended return. If the errors caused too much taxable income to be reported in the original return, the company must indicate in the amended return the extra tax paid.

Under the Moldovan Tax Code, companies may either obtain a refund of an overpayment of tax or offset the overpayment against existing or future tax liabilities.

All taxes in Moldova must be paid in Moldovan lei (MDL). To calculate the tax on income realized in foreign currency, the income must be converted into lei using the official exchange rate on the payment date.

**Dividends.** A 5% withholding tax is imposed on dividends paid to nonresidents. A 15% withholding tax is imposed on dividends paid to resident individuals.

Dividends received by residents from resident and nonresident companies are normally included in taxable income.

**Foreign Tax Relief.** Companies may claim a credit against corporate income tax for foreign tax paid on income that is subject to tax in Moldova. The foreign tax credit is granted for the year in which the relevant income is subject to tax in Moldova.

### C. Determination of Trading Income

**General.** Taxable income includes income earned from all sources, less deductible expenses and allowances provided for by the tax law. In general, companies may deduct ordinary and necessary expenses accrued during the tax year with respect to its business activities. However, they may not deduct the following items:

- Personal and family expenses of the company founders and employees;
- Amounts paid for the acquisition of land;
- Amounts paid for the acquisition of depreciable property or of fixed assets with useful lives exceeding one year;
- Losses resulting from sales or exchanges of property (for the treatment of capital losses, see Section B);
- Unjustified expenses paid to related parties, including compensation, interest and rent;
- Amounts paid to the holders of business patents;
- Expenses related to exempt income; and
- Provisions for bad debts.

**Inventories.** The Moldovan tax law does not provide for any special rules for the valuation of inventories.

**Provisions.** If a court decision confirms that a debt owed to a company will not be recovered, the company may deduct for tax purposes the amount of the debt. Provisions for bad debts are not deductible for tax purposes.

**Tax Depreciation.** Fixed assets used in business activities may be depreciated using the declining-balance method. To calculate depreciation, fixed assets are classified into five categories. The following are the categories and the applicable depreciation rates.

Category	Rate (%)
1	5
2	8
3	10
4	20
5	30

The allocation of the fixed assets to the above categories is based on the Catalogue of Fixed Assets approved by the government of Moldova.

The assets in Category 1 are depreciated individually. The assets in the other categories are depreciated as groups.

**Relief for Losses.** Companies incurring a tax loss may deduct one-fifth of the loss in each of the five subsequent tax years. Losses may not be carried back.

**Groups of Companies.** The Moldovan tax law does not contain any measures regarding groups of companies in Moldova. Consequently, the filing of consolidated returns or the granting of relief for losses on a group basis is not permitted.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on goods and services delivered in or imported into Moldova	
Standard rate	20
Bread and bread products, milk and dairy products, medicines and sugar produced from imported sugar beet	8
Natural and liquefied gases delivered in or imported into Moldova	5
Exports of goods and services, international cargo and passenger transport, certain distributions of electric power, thermic energy and hot water, and other specified goods and services relating to diplomatic missions and international organizations	0
Excise taxes, on certain consumption goods; tax is imposed at a fixed amount per unit of the good or by applying an ad valorem rate to the market value of the good	Various
Social security contributions, on remuneration; paid by	
Employer	24
Employee	5
Medical insurance contributions, on remuneration; paid by	
Employer	3
Employee	3
Customs duties; rates set by Customs Tariff Law	Various
Local taxes on real estate; the rates of the taxes are set by the local authorities and may not be less than 50% of the maximum rate established by the Moldovan government; taxes are imposed on the value of the real estate set through directives of the local authorities; maximum rate	0.1

### **E. Foreign-Exchange Controls**

The Moldovan leu (MDL) is the only currency that may be used to make payments in Moldova. The National Bank of Moldova (NBM) establishes the official exchange rate for the leu in relation to other foreign currencies. Both resident and nonresident companies may open leu or foreign currency accounts in authorized banks of Moldova.

Resident companies are not required to convert proceeds received in foreign currency into lei (plural of leu). However, they may not transfer foreign currency from their accounts to the accounts of other residents of Moldova, except for authorized banks.

Nonresidents may transfer abroad currency if the currency was registered in their account or if the funds were previously held in a leu deposit account with a Moldovan authorized bank.

Payments in currency by resident companies to nonresidents may be made only from foreign-currency accounts at authorized Moldovan banks (or at foreign banks that are authorized by NBM), and these payments may be made by bank transfer only.

For a distribution of profits during the year, a company should be ready to present to interested bodies the quarterly financial report, and the statutory act of the company that indicates the amount of the distribution. For a distribution of profits at the end of the fiscal year, the company should have ready for inspection a copy of the filed annual tax return and the statutory act of the company that indicates the amount of the distribution.

## F. Treaty Withholding Tax Rates

The following table shows the applicable withholding rates under Moldova's bilateral tax treaties.

	Dividends		Interest %	Royalties %
	A %	B %		
Albania	10	5	5	10
Armenia	15	5	10	10
Austria	15	5	5	5
Azerbaijan	15	8 (a)	10	10
Belarus	15	15	10	15
Belgium	15	15	15	0
Bosnia-Herzegovina	10	5	10	10
Bulgaria	15	5	10	10
Canada	15	5 (b)	10	10
China	10	5	10	10
Croatia	10	5	5	10
Czech Republic	15	5	5	10
Estonia	10	10	10	10
France (j)	15	5 (c)	5	2
Georgia (j)	15	5 (d)	10	10
Germany	15	15	5	0
Greece	15	5	10	8
Hungary	15	5	10	0
Italy (j)	15	5	5	5
Japan	15	15	10	10
Kazakhstan	15	10	10	10
Kyrgyzstan	15	5	10	10
Latvia	10	10	10	10
Lithuania	10	10	10	10
Luxembourg (j)	10	5	5 (e)	5
Macedonia	10	5	5	10
Montenegro	15	5	10	10
Netherlands	15	5 (f)	5	2
Poland	15	5	10	10
Romania	10	10	10	10/15 (g)
Russian Federation	10	10	0	10
Serbia	15	5	10	10
Slovak Republic	15	5	10	10
Switzerland	15	5	10 (h)	0
Tajikistan	10	5	5	10
Turkey	15	10	10	10
Turkmenistan (j)	10	10	10	10
Ukraine	15	5	10	10
Uzbekistan	15	5	10	15
Nontreaty countries	10	10	10 (i)	15

A These are the general dividend withholding tax rates.

B In general, the rates apply if the beneficiary of the dividends is a company that holds directly at least 25% of the share capital of the payer.

- (a) This rate applies if the effective beneficiary of the dividends is a company that has invested foreign capital of at least US\$250,000 in the payer of the dividends.
- (b) This rate applies if the beneficiary of the dividends is a company holding directly at least 10% of the capital of the payer.
- (c) This rate applies if the beneficiary of the dividends is a company holding directly at least 10% of the payer of the dividends.
- (d) This rate applies if the effective beneficiary of the dividends is a company (other than a society) that has invested more than US\$300,000 in the capital of the payer of the dividends.
- (e) No tax is withheld if the effective beneficiary of the interest is a financial institution.
- (f) No tax is withheld if the effective beneficiary of the dividends is a company that directly holds at least 50% of the capital of the payer of the dividends and has invested US\$300,000 or an equivalent amount of national currency of an European Union (EU) member state in the capital of the payer of the dividends.
- (g) The 10% rate applies to royalties paid for the use of patents, trademarks, drawings or patterns, plans, secret formulas or manufacturing procedures as well as for industrial, commercial or scientific information. The 15% rate applies to other royalties.
- (h) No withholding tax is imposed on interest paid on bank loans or on interest paid in connection with the following: sales on credit of industrial, commercial or scientific equipment; or sales of goods between enterprises.
- (i) Interest on deposits and securities of individuals is not taxable until 2010. Interest on bank deposits or corporate bonds of legal entities is not taxable until 2010, if the deposits are made for a period of more than three years or if the bonds are issued for a period of more than three years. Interest on state securities is not taxable until 1 January 2015.
- (j) This treaty has been signed, but it is not yet in effect.

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## MOROCCO

(Country Code 212)

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### A. At a Glance

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (a)(b)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	10 (c)
Interest	10/20/30 (d)
Royalties, Scientific Know-how Payments, Technical Assistance Fees and Remunera- tion for Most Services	10 (e)
Wages and Indemnities Paid to Nonperma- nent Employees	30 (f)
Rent on Equipment Used in Morocco	10 (e)
Branch Remittance Tax	10 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	4



- (a) The corporate income tax rate is 37% for banks, financial institutions and insurance companies.
- (b) See Section B.
- (c) The dividend withholding tax is a final tax for nonresidents. Withholding tax does not apply to dividends paid to Moroccan companies subject to Moroccan corporate tax.
- (d) The 10% rate applies to interest paid to nonresidents on loans or other fixed-interest claims. The 10% tax is a final tax. The 20% rate applies to interest paid to resident companies and interest paid to resident self-employed individuals in connection with a business conducted by the recipient. The 20% tax may be credited by recipients against their total income tax. The 30% rate applies to interest payments made to resident individuals if the payments are unrelated to a business conducted by the recipient. The 30% tax is a final withholding tax.
- (e) This is a final tax applicable only to nonresidents.
- (f) This withholding tax applies only to payments to persons who are not salaried employees and do not hold a special function in the company paying the indemnities. The rate is 17% for teachers.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** The following companies are subject to corporate income tax:

- Resident companies (those incorporated in Morocco);
- Nonresident companies deriving taxable income from activities carried out in Morocco;
- Nonresident companies deriving capital gains from sales of unlisted shares and bonds in Morocco; and
- Branches of foreign companies carrying on business activities independent of those performed by their head office.

In general, only Moroccan-source income is subject to tax.

**Rates of Tax.** The regular corporate tax rate is 30% of taxable income. Banks, financial institutions and insurance companies are subject to tax at a rate of 37%.

In general, the minimum tax is the greater of DH 1,500 or 0.5% of the total of the following items:

- Turnover from sales of delivered goods and services rendered;
- Other exploitation income (for example, directors' fees received when the company acts as an administrator of another company, revenues from buildings that are not used in the company's activities and profits and transfers of losses with respect to shared operations);
- Financial income (excluding financial reversals and transfers of financial expenses); and
- Subsidies received from the state and third parties.

However, the rate of minimum tax is reduced to 0.25% for sales of petroleum goods, gasoline, butter, oil, sugar, flour, water and electricity. The minimum tax is imposed if it exceeds the corporate income tax calculated using the 30% rate or if the company incurs a loss. New companies are exempt from minimum tax for 36 months after the commencement of business activities.

Nonresident contractors may elect an optional method of taxation for engineering, construction or assembly work or for work on industrial or technical installations. Under the optional method, an 8% tax is withheld on the total contract price including the cost of materials, but excluding value-added tax.

If the remittance of branch profits can be directed by the head office, a 10% withholding tax is imposed on branch profits after deduction of corporate income tax.

**Tax Incentives.** Morocco offers the same tax incentives to domestic and foreign investors. Various types of companies benefit from tax exemptions and tax reductions, which are summarized below.

*Permanent Exemptions.* Permanent tax exemptions are available to the following entities:

- Cattle-farming enterprises, nonprofit organizations and cooperatives with annual turnover of less than DH 5 million, excluding VAT; and
- Companies located in the free zone of the Tangier port for operations realized within the zone.

Capital risk companies are exempt from corporate income tax on profits derived within the scope of their activities (these are profits related to purchases of companies' shares that support such companies' development and the sales of such shares thereafter). This exemption is subject to the following conditions:

- At least 50% of the shares held by the capital risk company must be related to Moroccan companies that are not listed on the stock exchange and that have turnover of less than DH 50 million, excluding VAT; and
- The capital risk company must maintain specified bookkeeping.

*Total Exemption Followed by Permanent Reduction.* Export companies are exempt from corporate income tax on their profits related to their export turnover during the first five years following their first export transaction. These companies benefit from a reduced rate of 17.5% in subsequent years. For service exportation, the related turnover must be generated in foreign currency that is properly repatriated.

Hotel companies benefit from a tax exemption and a tax reduction with respect to their profits corresponding to their foreign currency revenues that are generated by their hotels and are remitted to Morocco either directly or through travel agencies. Hotel companies are fully exempt from tax on such profits for the first five years following their first foreign currency sale operation, and they benefit from a reduced rate of 17.5% on such profits in subsequent years.

*Permanent Reductions.* Mining companies, including those that sell products to export companies, benefit from a reduced corporate income tax rate of 17.5%.

Companies established in the area of Tangier benefit from a reduced corporate income tax rate of 17.5% and a 50% reduction in business license tax and urban tax (for details regarding the last two taxes, see Section D). This regime may be combined with all other tax benefits.

*Total Exemption Followed by Temporary Reduction.* Export companies established in Moroccan free zones (*zones franches*) are exempt from corporate income tax for the first 5 years of activity and are subject to corporate income tax at a rate of 8.75% for the following 20 years.

*Temporary Exemption.* Agricultural enterprises are exempt from all taxes until the year 2010.

Companies holding a hydrocarbon exploration and exploitation permit are exempt from corporate income tax for 10 years from the beginning of hydrocarbon regular production.

*Temporary Reduction.* Companies, other than permanent establishments of foreign companies, banks and insurance companies, benefit from a reduced corporate income tax rate of 17.5% for the first five years of operations if they are located in economic areas that are specified by decree as being in a developmental stage.

Handicraft companies, private schools and educational institutes benefit from a reduced corporate income tax rate of 17.5% for their first five years of operations.

Banks and holding companies located in offshore zones benefit from a reduction in corporate income tax for the first 15 years of operation. Banks may elect to pay a minimum corporate income tax of US\$25,000 or pay tax at a reduced rate of 10%. Holding companies pay a flat tax of US\$5,000.

**Capital Gains.** Capital gains on the sale of fixed assets are taxed at regular corporate tax rates. However, they are reduced by the following percentages:

- 25% if the asset was held more than two years but not more than four years before the date of transfer; and
- 50% if the asset was held more than four years before the date of transfer.

The above reductions do not apply to capital gains on shares or on land that does not have any construction.

Nonresident companies are taxed on profits derived from sales of shares of Moroccan companies at a rate of 30%. In addition, they must file an income declaration before the end of the month following the month in which the sales occurred.

Special rules apply to mergers and liquidations of companies.

**Administration.** Within three months after the end of their financial year, companies must file a corporate income tax return with the inspector of direct taxes for the district in which their company headquarters are located. The companies' financial statements must be enclosed with the return.

Companies must make advance payments of tax. For companies with a 31 December year-end, the payments must be made by 31 March, 30 June, 30 September and 31 December. Each payment must be equal to 25% of the previous year's tax.

**Dividends.** Dividends are generally subject to a 10% withholding tax. However, withholding tax is not imposed on dividends paid to Moroccan companies subject to Moroccan corporate tax.

Moroccan companies do not include in their taxable income dividends received from their local and foreign subsidiaries if the payer of the dividends is subject to corporate income tax.

**Foreign Tax Relief.** Foreign tax relief is granted in accordance with Morocco's double tax treaties.

### C. Determination of Trading Income

**General.** Computation of taxable income is based on financial statements prepared according to generally accepted accounting principles.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Interest paid on shareholder loans in excess of the interest rate determined annually by the Ministry of Finance or on the portion of a loan from a shareholder exceeding the amount of capital stock that is fully paid up. None of the interest on shareholder loans is deductible if the capital stock is not fully paid up.
- Certain specified charges, gifts, subsidies and penalties.

The tax base for coordination centers (*centers de coordination*) is equal to the sum of the following: 10% of their operating expenses; and their income derived from noncurrent operations, such as sales of goods and services, and investments in securities.

**Inventories.** Inventory is normally valued at the lower of cost or market value. For non-identifiable goods, cost must be determined by a weighted-average cost-price method or the first-in, first-out (FIFO) method.

**Provisions.** Provisions included in the financial statements are generally deductible for tax purposes if they are established for clearly specified losses or expenses that are probably going to occur.

Provisions on bad debts are deductible if a court action is instituted against the debtor within 12 months after the booking of the provision.

**Depreciation.** Land may be amortized only if it contributes to production (for example, mining lands). Other fixed assets may be depreciated using the straight-line method at rates generally used in the industry. The following are some of the applicable rates.

Asset	Rate (%)
Commercial and industrial buildings	4 or 5
Office equipment	10
Motor vehicles (for vehicles used in tourism, the maximum depreciable value is DH 300,000 including value-added tax)	20
Plant and machinery	10

Certain intangible assets, such as goodwill, do not depreciate over time or by use and, consequently, are not amortizable.

**Relief for Tax Losses.** Losses may be carried forward for four years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** Moroccan law does not provide for the financial integration of Moroccan companies equivalent to a consolidated filing position.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax, on goods sold and services rendered in Morocco	
General rate	20
Electric power, transport of tourists and goods and certain foodstuffs, such as tea, coffee, jam	14
Restaurants, hotels, salt, and bank and credit operations	10
Utilities (water provided through public distribution network and oil), pharmaceuticals and sugar	7
Business license tax, on gross rental value of the business premises	Various
Urban tax, annual tax on the rental value of property that is part of business assets	13.5
Registration duties, on transfers of real property or businesses	0.25 to 5
Professional training tax, on gross salaries including fringe benefits	1.6
Social security contributions, paid by employer	
For family allowances, on gross monthly remuneration (no maximum limit of remuneration applies)	6.5
For illness and pregnancy, on gross monthly remuneration, up to a maximum remuneration of DH 6,000 a month	8.6
For required medical care	3

### **E. Foreign-Exchange Controls**

Remittances of capital and related income to nonresidents are guaranteed. No limitations are imposed on the time or amount of profit remittances. The remittance of net profits on liquidation, up to the amount of capital contributions, is guaranteed through transfers of convertible currency to the Bank of Morocco.

As a result of the liberalization of foreign-exchange controls, foreign loans generally do not require an authorization from the exchange authorities. However, to obtain a guarantee for the remittance of principal and interest, notes are commonly filed at the exchange office, either through the bank or directly by the borrower. In general, if the loan's conditions are equivalent to those prevailing in foreign markets, the exchange office approves the loan agreement. The loan agreement must be filed with the exchange office as soon as it is established.

To promote exporting, Moroccan law allows exporters of goods or services to hold convertible dirhams amounting to 20% of repatriated currency. Exporters must spend these convertible dirhams on professional expenses incurred abroad. Such expenses must be paid through bank accounts of convertible dirhams, called "Convertible Accounts for the Promotion of Export" (Comptes Convertibles de Promotion des Exportations).

**F. Treaty Withholding Tax Rates**

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Bahrain	5/10 (h)	10	10
Belgium	15 (e)	15 (e)	5/10
Bulgaria	7/10 (i)	10	10
Canada	15 (e)	15 (e)	5/10
Denmark	10/25 (e)	10	10
Egypt	10/12.5 (e)	20 (e)	10
Finland	15 (e)	10	10
France	15 (a)(e)	10/15 (e)	5/10
Germany	5/15 (e)	10	10
Hungary	12 (e)	10	10
India	10 (e)	10	10
Italy	10/15 (e)	10	5/10
Korea	5/10 (f)	10	10
Luxembourg	10/15 (e)	10	10
Maghreb Arab Union (j)	– (b)	– (b)	– (b)
Malaysia	5/10 (h)	10	10
Netherlands	10/25 (e)	10/25 (e)	10
Norway	15 (e)	10	10
Poland	7/15 (e)(i)	10	10
Portugal	10/15 (e)	12 (e)	10
Romania	15 (e)	10	10
Russian Federation	5/10 (f)	10	10
Spain	10/15 (e)	10	5/10
Sweden	– (b)	– (c)	– (b)
Switzerland	7/15 (e)(i)	10	10
Tunisia	– (d)	– (d)	– (d)
United Arab Emirates	5/10 (g)	10	10
United Kingdom	10/25 (e)	10	10
United States	10/15 (e)	15 (e)	10
Nontreaty countries	10	10	10

- (a) No withholding tax is imposed in France if the recipient is subject to tax on the dividend in Morocco.
- (b) Tax is payable in the country in which the recipient is domiciled.
- (c) Tax is payable in the country in which the creditor is domiciled.
- (d) The treaty has been suspended and is replaced by the multilateral treaty between the Maghreb Union countries (Morocco, Algeria, Libya, Mauritania and Tunisia).
- (e) Under Moroccan domestic law, the withholding tax rate for dividends and interest is 10%. Consequently, for dividends and interest paid from Morocco, the treaty rates exceeding 10% do not apply.
- (f) The 5% rate applies if the beneficiary of the dividends holds more than US\$500,000 of the capital of the payer of the dividends. The 10% rate applies to other dividends.
- (g) The 5% rate applies if the beneficiary of the dividends holds directly at least 10% of the capital of the payer of the dividends. The 10% rate applies to other dividends.
- (h) The 5% rate applies if the beneficiary of the dividends is a company that holds directly at least 10% of the capital of the payer of the dividends.
- (i) The 7% rate applies if the beneficiary of the dividends is a company, other than a partnership, that holds directly at least 25% of the capital of the payer of the dividends. The higher rate applies to other dividends.
- (j) The Maghreb Arab Union countries are Algeria, Libya, Mauritania, Morocco and Tunisia.

Morocco has signed tax treaties with Gabon, Jordan, Qatar, Syria, Ukraine and Yemen, but these treaties have not yet been ratified.

# MOZAMBIQUE

(Country Code 258)

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## A. At a Glance

Corporate Income Tax Rate (%)	32 (a)
Capital Gains Tax Rate (%)	32 (a)
Branch Tax Rate (%)	32 (a)(b)
Withholding Tax (%)	
Dividends	20
Interest	20
Royalties	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) For 2003 through 2010, the rate is 10% for income derived in the agricultural and breeding sector.
- (b) Income earned by nonresident companies or other entities without a head office, effective management control or a permanent establishment in Mozambique is generally subject to withholding tax at a rate of 20% (see Section B).

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporate income tax (IRPC) is levied on resident and nonresident entities.

*Resident Entities.* Resident entities are companies and other entities with their head office or effective management and control in Mozambique. Resident companies, including unincorporated entities, whose main activity is commercial, industrial or agricultural, are subject to IRPC on their worldwide income, but a foreign tax credit may reduce the amount of IRPC payable.

*Nonresident Entities.* Companies and other entities operating in Mozambique through a permanent establishment are subject to IRPC on the profits attributable to the permanent establishment.

Companies and other entities without a permanent establishment in Mozambique are subject to IRPC on income deemed to be obtained in Mozambique.

**Tax Rates.** The standard corporate income tax rate is 32%. For 2003 through 2010, income derived in the agricultural and breeding sector is subject to tax at a rate of 10%.

Income earned by nonresident companies or other entities without a head office, effective management control or a permanent establishment in Mozambique is generally subject to withholding tax

at a rate of 20%. However, the rate is reduced to 10% for income derived from the rendering of telecommunication or international transport services. Income that is subject to a 20% withholding tax includes, but is not limited to, the following:

- Income derived from the use of intellectual or industrial property and the providing of information in the industrial, commercial or scientific sectors;
- Income derived from the use of, or the assignment of, rights to industrial, commercial or scientific equipment; and
- Income from the application of capital.

**Tax Incentives.** Mozambique offers various tax incentives to investors, which are summarized below.

The tax incentives described in the following three paragraphs are available for five tax years beginning with the tax year in which the company commences activities within the scope of an investment project approved by the Investment Promotion Centre.

Companies implementing investment projects benefit from the following main incentives:

- Tax credit for investment that ranges from 5% to 15%, depending on the location of the project;
- Tax deductions ranging from 5% to 15% of the taxable income for investments with acquisition of state-of-the-art technology and training of Mozambican employees;
- Tax deductions of up to 150% of investments for the construction and rehabilitation of public infrastructure; and
- Accelerated depreciation of buildings and equipment at double the normal rates.

Companies implementing investment projects are also exempt from import duties on equipment classified as Class K in the Customs Manual.

Special tax incentives may be granted to the following projects:

- Projects in agriculture and tourism;
- Projects involving investments exceeding US\$500 million; and
- Projects located in specific areas.

Special tax rules apply to manufacturing units that intend to operate under an Industrial Free Zone regime. The main requirements for this regime are that at least 85% of production is exported and that a minimum 250 workplaces are created.

**Administration.** The tax year is the calendar year. However, companies may apply to the tax authorities for a different year-end.

Companies must make two types of provisional payments of corporate income tax. The two types are known as advance payments and special advance payments. The advance payments are made in three equal monthly installments in May, July and September of the tax year to which the tax relates. The total amount of these payments equals 80% of the tax assessed in the preceding year. The special advance payments are made in three equal monthly installments, in June, August and October. They equal the difference between 0.5% of the company's turnover and the total of advance payments made in the preceding tax year. The minimum amount of the special advance payments is MT 10,000, while the



maximum amount of such payments is MT 30,000. Companies that have adopted a tax year other than the calendar year make advance payments in the 5th, 7th and 9th months of the tax year and make special advance payments in the 6th, 8th and 10th months of the tax year.

**Dividends.** Dividends are subject to 20% withholding tax.

**Foreign Tax Relief.** Foreign-source income is taxable in Mozambique. However, foreign tax may be credited against the Mozambican tax liability up to the amount of IRPC allocated to the income taxed abroad. Foreign tax credits may be carried forward for five years.

### C. Determination of Trading Income

**General.** Taxable income is determined according to the following rules:

- For companies with a head office or effective management control in Mozambique that are mainly engaged in commercial, agricultural or industrial activities, taxable income is the net accounting profit calculated in accordance with Mozambican generally accepted accounting principles, adjusted according to the tax norms; and
- For companies with a head office or effective management control in Mozambique that do not mainly engage in commercial, industrial or agricultural activities, taxable income is the net total of revenues from various categories of income as described in the Individual Income Tax (IRPS) Code, less expenses.

Expenses that are considered essential for the generation of profits or the maintenance of the production source are deductible for tax purposes. Nondeductible expenses include, but are not limited to, the following:

- Undocumented expenses (taxed separately at a rate of 35%); and
- 50% of the rent paid by a lessee that is intended to be applied towards the purchase price of the leased asset.

Premiums paid for health, accident and life insurance and contributions to pension funds and other complementary social security schemes are deductible for tax purposes up to 10% of the salary fund. If the employees do not have the right to social security pensions, this limit can be increased to 20%.

**Inventories.** Inventories must be valued consistently by any of the following criteria:

- Cost of acquisition or production;
- Standard costs in accordance with adequate technical and accounting principles;
- Cost of sales less the normal profit margin; and
- Any other special valuation that receives the prior authorization of the tax authorities.

Changes in the method of valuation must be justifiable and acceptable to the tax authorities. Any profits resulting from such a change are taxable.

**Provisions.** Provisions for the following items are deductible up to amounts considered reasonable by the tax authorities:

- Doubtful accounts as a percentage of accounts receivable;
- Inventory losses;
- Obligations and expenses that are subject to a judicial process; and
- Other provisions imposed by the central bank or General Insurance Inspection (the body that inspects insurance activities) for specific activities.

**Depreciation.** In general, depreciation is calculated using the straight-line method. Maximum depreciation rates are fixed by law for general purposes and for certain specific industries. If rates below 50% of the official rates are used, the company cannot claim total allowable depreciation over the life of the asset. The following are some of the maximum straight-line depreciation rates fixed by law.

<b>Asset</b>	<b>Rate (%)</b>
Commercial buildings	2
Industrial buildings	4
Motor vehicles	20 to 25
Plant and machinery	10 to 16.66

**Relief for Losses.** Tax losses may be carried forward for five years. No carryback is allowed.

**Groups of Companies.** Mozambican law does not contain any measures allowing the filing of consolidated returns.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax	17
Tax on specific consumption; levied on specified goods at the production stage and on imports of such goods; specified goods include vehicles and luxury goods; maximum rate	65
Social security contributions, on monthly salaries and wages; paid by	
Employer	4
Employee	3
Import duties	Various
Property transfer tax (SISA); payable by purchaser of immovable property	2

#### **E. Foreign-Exchange Controls**

The central bank controls all transfers of capital (including direct investments) and payments into and out of Mozambique. An authorization from the central bank is not required for the maintenance of local foreign-currency bank accounts.

In general, the repatriation of profits and of proceeds from the sale or liquidation of an investment is permitted for approved foreign investment projects if the investment has been registered and compliance with other requirements exists.

**F. Treaty Withholding Tax Rates**

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Italy (c)	15	10	10
Mauritius (a)	8/10/15 (b)	8	5
Portugal (a)	15	10	10
United Arab Emirates (a)(c)	0	0	5
Nontreaty countries	20	20	20

- (a) These rates apply to an effective beneficiary of the income that does not have a permanent establishment in Mozambique.
- (b) The 8% rate applies if the effective beneficiary of the dividends is a company that holds at least 25% of the share capital of the company distributing the dividends. The 10% rate applies if the effective beneficiary of the dividends is a company that holds less than 25% of the share capital of the company distributing the dividends. The 15% rate applies to other dividends.
- (c) This treaty is not yet in force.

**NAMIBIA**

(Country Code 264)

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**A. At a Glance**

Corporate Income Tax Rate (%)	35
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	35
Withholding Tax (%)	
Dividends	10 (a)
Interest	0 (b)
Royalties from Patents, Know-how, etc.	10.5 (c)
Branch Remittance Tax	0 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) Final tax applicable to nonresidents. Dividends paid out of oil and gas profits are exempt from withholding tax.
- (b) Effective from 1 March 2009, a withholding tax will be imposed on interest paid to all persons, excluding Namibian companies, by Namibian banking institutions, Namibian unit trust schemes and the Namibia Post Office Savings Bank.

- (c) Applicable to nonresidents. The rate is determined by applying the regular corporate tax rate of 35% to a deemed taxable profit of 30% of gross royalties.
- (d) In the absence of treaty protection, the 10% dividend withholding tax may be imposed on branch profits when the parent company declares a dividend.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies subject to tax include companies registered in Namibia and branches of foreign companies in Namibia deriving income from a Namibian source. Other associations (such as close corporations) registered or incorporated outside Namibia that carry on business or have an office in Namibia are taxed as companies. Corporate income tax is levied primarily on income from Namibian sources.

**Rates of Tax.** The rate of tax for companies, other than those companies that have been awarded manufacturing status, is 35%. The tax rate for companies that have been awarded manufacturing status is 18% for their first ten years of registration as a manufacturer and 35% thereafter. The Receiver of Revenue, in consultation with the Ministry of Trade and Industry, reviews and approves applications to register as manufacturers. Approval is granted only if the company is engaged in manufacturing and if its activities economically benefit Namibia or its inhabitants (see Section C for information regarding special deductions available to registered manufacturers).

Mining companies are taxed at a rate of 37.5% for hard-rock mining and 55% for diamond mining. Companies that render diamond mining services are also taxed at a rate of 55%. The tax rate for hard-rock mining services companies is 37.5% for tax years beginning on or after 1 January 2008. Petroleum exploration and production companies are taxed at a rate of 35% or according to a special formula in certain cases.

Under the Export Processing Zone Act, an export processing zone has been established in Walvis Bay. Companies operating in the zone are exempt from corporate income tax. Value-added tax, transfer duty and stamp duty are not imposed in the zone.

**Capital Gains.** Capital gains tax is not imposed in Namibia.

**Administration.** Annual financial statements must be prepared as of the last day of February, unless another date is agreed to by the tax authorities. In practice, permission to use the company's financial year-end is always granted. A company is required to make two provisional tax payments, the first payment six months after the start of the financial year and the second at the end of the year. Payments are based either on the taxable income of the most recent year assessed or on an estimate of the current year's taxable income. Penalties are imposed if provisional taxes are less than 90% of the final tax assessment unless the prior year's tax assessment was used as the basis for estimating taxable income.

Companies must file an annual return within seven months after the tax year-end unless an extension is obtained. If the total provisional tax payments are less than the tax liability shown on the return, the balance of tax due must be paid within seven months after the end of the tax year, regardless of whether a company has obtained an extension to file its tax return. A company's tax year generally coincides with its financial year.

**Dividends.** Dividends received by a company are exempt from the regular company tax, and expenses incurred in the production of dividend income are not deductible in the determination of the company's taxable income. Dividends paid to nonresidents are subject to a final 10% withholding tax unless they are paid out of oil and gas profits. A tax treaty may reduce the rate of such tax.

**Foreign Tax Relief.** In the absence of treaty provisions, a unilateral tax credit is available for foreign direct and withholding taxes paid on dividends and royalties. The credit may not exceed the Namibian tax attributable to such income. The credit is denied to the extent that a refund of the foreign tax is possible.

### C. Determination of Trading Income

**General.** Taxable income includes both trade and nontrade income (interest) not of a capital nature. Revenue amounts and realized foreign-exchange gains are subject to tax. Taxable income rarely coincides with profit calculated in accordance with accepted accounting practice.

To be eligible for deduction, expenditures must be incurred in the production of taxable income in Namibia, must be for purposes of trade and must not be of a capital nature. However, realized foreign-exchange losses are deductible even if they are of a capital nature.

Scientific research expenditures are deductible if the research is undertaken for the development of business or is contributed to an institution approved by the Council for Scientific and Industrial Research.

**Special Deductions.** The following special deductions are available to registered manufacturers:

- An additional deduction of 25% of the wages paid to their manufacturing staffs;
- An additional deduction of 25% of approved training expenses for their manufacturing staffs;
- An additional deduction of 25% of export marketing expenses, depending on the level of increase in export turnover; and
- An additional deduction of 25% of expenses incurred to transport by road or rail raw materials and equipment used in the manufacturing activity for the first 10 tax years as a manufacturer.

Losses resulting from these special deductions may not be used to offset other income.

Taxable income derived from exports of manufactured goods, excluding fish and meat products, is reduced by 80%. This allowance is available to trading houses and manufacturers. For manufacturers, this allowance applies in addition to the special deductions listed above. The combination of this allowance and the fourth special deduction listed above reduces the effective tax rate for manufacturers of exports to 0%.

**Inventory.** Trading stock includes all goods, materials or property acquired for manufacture or sale, including packaging but excluding consumables and machinery parts. The value of stock is based on original cost plus the costs of preparing stock for sale. The last-in, first-out (LIFO) method of stock valuation may be applied on approval by the Minister of Finance, subject to various conditions.

**Provisions.** Deductible expenses must be actually incurred, and consequently, provisions are not deductible. However, an allowance for doubtful accounts may be established equal to 25% of the debts that the Minister of Finance is satisfied are doubtful. The amount of irrecoverable debts written off is allowed as a deduction if the debts were once included as taxable income or if the write-off can be construed as an operating loss incurred in the production of income (for example, the write-off of casual loans to staff members who are unable to repay).

### **Tax Depreciation (Capital Allowances)**

*Machinery, Equipment and Vehicles.* The cost of machinery, motor vehicles, utensils, articles, ships and aircraft may be deducted in three equal annual amounts, beginning in the year of acquisition.

*Buildings.* An initial allowance of 20% of construction cost is permitted for commercial buildings in the year the buildings are first used. An allowance of 4% is permitted in each of the following 20 years. For industrial buildings of a registered manufacturer, an initial allowance of 20% and an annual allowance of 8% are allowed. No allowance is granted for employee housing.

*Patents, Designs, Trademarks and Copyrights.* If used in the production of income, the cost of developing, purchasing or registering patents, designs, trademarks, copyrights and similar property is allowed in full if such cost is not more than N\$200, or the cost can be amortized over the estimated useful life if more than N\$200. The period of write-off may not exceed 25 years.

*Mining Including Oil and Gas.* Prospecting and development expenses incurred in mining operations are not subject to the tax depreciation rules described above. In general, prospecting expenses may be deducted in the year production begins. Costs incurred on infrastructure may be deducted over three years, beginning in the year production begins.

*Recapture.* Capital allowances are generally subject to recapture to the extent the sales proceeds exceed the tax value after depreciation. In addition, capital allowances are recaptured if assets are withdrawn from a business or removed from Namibia, regardless of whether the assets are sold. The market value of the assets is used to determine the amount recaptured if no proceeds are received.

**Relief for Trading Losses.** All companies may carry forward unused losses indefinitely to offset taxable income in future years. Losses may not be carried back. Companies that carry on mining operations may offset current-year and prior-year trading losses from mining against other trade income and vice versa. However, such losses must be apportioned on a pro rata basis between mining and other trade income to determine taxable income from each source in the current year. Oil and gas companies may not offset losses from oil and gas activities against other trade income, or vice versa, in any year.

**Groups of Companies.** A group of companies is not taxed as a single entity in Namibia, and an assessed loss of one company cannot be offset against the taxable income of another company in the group. An assessed loss of a branch of a foreign company may be transferred to a Namibian subsidiary under certain circumstances.

## D. Value-Added Tax

Value-added tax (VAT) is levied on supplies of goods or services, other than exempt supplies, made in Namibia and on imports of goods and certain services.

The standard VAT rate is 15%. The following items are zero-rated: exports of goods; certain services rendered to nonresidents who are not registered for VAT; disposals of going concerns; and local supplies of fuel levy goods (petrol and diesel) and maize meal. Local public passenger transport, medical services, educational services and long-term residential rentals are exempt from VAT.

## E. Miscellaneous Matters

**Exchange Controls.** Namibia is a member of the Common Monetary Area, which also includes Lesotho, South Africa and Swaziland. Consequently, it is subject to the exchange control regulations promulgated by the Reserve Bank of South Africa. If Namibia withdraws from the Common Monetary Area, it is likely to introduce its own exchange control restrictions along similar lines.

Exchange controls are administered by the Bank of Namibia, which has appointed various commercial banks to act as authorized foreign-exchange dealers.

The Namibian dollar (N\$) is the Namibian currency. The Namibian dollar (N\$) and the South African rand (R) are convertible one for one (that is, R1=N\$1), and this rate does not fluctuate.

**Debt-to-Equity Rules.** The tax law includes measures that counter thin capitalization by adjusting both the interest rate and the amount of the loan based on arm's length principles. Although no guidelines have been published in this area, a debt-to-equity ratio of up to 3:1 is generally acceptable.

**Transfer Pricing.** The Namibian Income Tax Act includes transfer-pricing measures, which are designed to prevent the manipulation of prices for goods and services, including financial services (loans), in cross-border transactions between related parties.

**Antiavoidance Legislation.** Namibian legislation contains a general antiavoidance provision to attack arrangements that are primarily tax-motivated and, in certain respects, abnormal when considered in the context of surrounding circumstances. In general, the Bank of Namibia requires a debt-to-equity ratio of 3:1 when approving foreign investment into Namibia. Another antiavoidance provision deals with transactions involving companies (including changes in shareholdings) that are designed to use a company's assessed loss, usually by diverting income to, or generating income in, that company.

## F. Treaty Withholding Tax Rates

Namibia has entered into double tax treaties with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, the Russian Federation, South Africa and Sweden. In addition, it has a treaty with the United Kingdom, which is the 1962 treaty between the United Kingdom and South Africa as extended to Namibia.

The treaties provide for withholding tax rates on dividends, interest and royalties paid to residents of the other treaty countries as indicated in the following table.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Botswana	10	10	10
France	5/15 (a)	10	10
Germany	10/15 (b)	0	10
India	10	10	10
Malaysia	5/10 (c)	10	5
Mauritius	5/10 (c)	10	5
Romania	15	15	15
Russian Federation	5/10 (d)	10	5
South Africa	5/15 (c)	10	10
Sweden	5/15 (a)	10	5/15 (e)
United Kingdom	5/15 (f)	20	5
Nontreaty countries	10	0 (g)	10.5

- (a) The 5% rate applies if the recipient is a company that owns at least 10% of the payer of the dividends. The 15% rate applies to other dividends.
- (b) The 10% rate applies if the recipient is a company that owns at least 10% of the payer of the dividends. The 15% rate applies to other dividends.
- (c) The 5% rate applies if the recipient owns at least 25% of the payer of the dividends. The 10% rate applies to other dividends.
- (d) The 5% rate applies if the recipient is a company that owns at least 25% of the payer of the dividends and has invested at least US\$100,000 in the share capital of the payer. The 10% rate applies to other dividends.
- (e) The 5% rate applies to royalties paid for patents, secret formulas or information relating to industrial or scientific experience. The 15% rate applies to other royalties.
- (f) The 5% rate applies if the recipient is a company that controls directly or indirectly more than 50% of the voting power of the payer of the dividends. The 15% rate applies to other dividends.
- (g) Effective from 1 March 2009, a withholding tax will be imposed on interest paid to all persons, excluding Namibian companies, by Namibian banking institutions, Namibian unit trust schemes and the Namibia Post Office Savings Bank.

Namibia is negotiating tax treaties with Canada, Poland, Seychelles, Singapore, Spain, Tunisia and Zimbabwe.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25.5 (a)
Capital Gains Tax Rate (%)	25.5 (a)
Branch Tax Rate (%)	25.5 (a)
Withholding Tax (%)	
Dividends	15 (b)
Interest	0
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1
Carryforward	9

- (a) A tax rate of 20% applies to the first €40,000 of taxable income, and a tax rate of 23% applies to taxable income between €40,000 and €200,000. Optional tax rates may be elected for group interest income and for income from patented intangible assets. For details regarding these optional tax rates, see Section B.
- (b) This rate may be reduced to 0% if the recipient is a parent company established in a European Union (EU) member state (see Section B).

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporate income tax is levied on resident and nonresident companies. Resident companies are those incorporated under Dutch civil law, including subsidiaries of foreign companies, European Companies (*Societas Europaea*, or SEs) and European Co-operative Societies (*Societas Cooperativa Europaea*, or SCEs) established in the Netherlands, even if their management and statutory seat are located abroad. In addition, companies are resident if incorporated under foreign civil law, but effectively managed and controlled in the Netherlands. Resident companies are subject to tax on their worldwide income. Nonresident companies, primarily branch offices of foreign companies doing business in the Netherlands, are taxable only on specific income items, such as real estate and business profits in the Netherlands.

**Tax Rates.** For 2008, the standard corporate tax rate is 25.5%. A tax rate of 20% applies to the first €40,000 of taxable income, and a tax rate of 23% applies to taxable income between €40,000 and €200,000.

Optional tax rates may be elected for group interest income and for income from patented intangible assets. For details regarding these optional tax rates, see *Special Optional Tax Rates* below.

**Special Optional Tax Rates.** Special optional tax rates, which may be elected for group interest income and from income from patented intellectual property, are described below.

*Group Interest Income.* In the group interest box, the balance of received and paid interest on group loans is effectively taxed at a rate of 5%. This effective rate results from a reduction of the tax base of about 80%. The group interest box is aimed at strengthening the Dutch investment climate for financing centers. It is the successor to the Dutch group financing facility that was abolished retroactively as of 2001 after the European Commission determined that the regime constituted state aid. The group interest box will take effect when the European Commission determines that the box does not constitute state aid. On 7 February 2007, the European Commission decided to open a formal inves-

tigation procedure to examine if the Dutch group interest box violates the European Community (EC) Treaty state aid rules. At this stage, the European Commission takes the view that, in practice, only multinational groups of companies may benefit from the group interest box. Consequently, the European Commission considers the group interest box to be a selective advantage for certain companies that needs to be examined as a possible violation of the EC Treaty state aid rules. It is unclear when the European Commission will make its final determination.

The 5% tax rate applies to group interest up to a maximum amount equal to the statutory legal interest on the taxpayer's average fiscal equity in the relevant tax year. As a result, the application of the group interest box is limited to financing activities funded through equity. Intragroup interest includes the return on short term investments that are intended to be used for the acquisition of a participation. Foreign-exchange results and changes in the valuation of loans receivable or payable fall outside the scope of the group interest box.

The box is optional, which allows companies having more group interest expenses than group interest income to continue deducting their costs at the general tax rate (25.5%). A condition for application of the group interest box is that all members of the group that are subject to tax in the Netherlands join the election for the interest box for a period of at least three years. The group interest box applies from the beginning of the tax year for which the Dutch group elects to apply the box. A group company is any company in which 50% of the shares are held, or that holds 50% of the shares of another company. In addition, if a company holds at least 50% in other companies, the subsidiary companies are considered to be group companies. On request, unrelated parties that work together can be considered as a group (opting in). In addition, it is possible for an independent member of a group to be considered to be unrelated to the rest of the group (opting out).

The group interest box is advantageous for Dutch companies that also grant loans to foreign group companies. The interest income is taxed in the Netherlands at a rate of 5%, while the interest expense is deductible in another country.

*Patents.* Effective from 1 January 2007, a taxpayer may deduct immediately from taxable income subject to the regular corporate income tax rate the costs of developing intangible assets. As a result, such costs do not need to be capitalized.

In addition, if certain conditions are met, a taxpayer can elect to apply the patent box. The aim of this box is to encourage innovation and investment in research and development (R&D).

In the box, the net income from patented intellectual property is effectively taxed at a rate of 10% by reducing the tax base by about 60%. This 10% rate applies only to the extent that the net earnings derived from the self-developed intangible assets exceed the development costs. If the patent box regime is elected with respect to a particular intangible asset, the other intangibles are not required to be allocated to the box. The total amount of net earnings from intangible assets that can be taxed at the rate of 10% is limited to four times the total amount of the development costs of all intangible assets allocated in the box.

An important condition for application of the patent box is that the taxpayer must have been granted a patent or breeder's right (this right is granted for newly invented seeds) for an intangible asset produced by the taxpayer. Trademarks, logos, and similar assets do not qualify. In addition, the patent box applies only to an intangible asset for which 30% or more of the expected benefits (future profits) are derived from patents granted to the taxpayer. Effective from 1 January 2008, a patent is no longer required for intellectual property that originates from R&D if a so-called R&D declaration is provided by the government. For such intellectual property, the 10% rate is limited to net income from intellectual property of €400,000 per year.

In treaty situations, foreign royalty withholding tax can normally be credited against Dutch corporate income tax, but the amount of the credit is limited to the Dutch corporate income tax attributable to the relevant royalty income.

**Capital Gains.** No distinction is made between capital gains and other income. All income is taxed at the corporate tax rates.

**Administration.** The standard tax year is the calendar year, but a company may use its fiscal year as its tax year.

An annual tax return must be filed with the tax inspector of corporate taxes within six months after the end of the tax year, unless the company applies for an extension (normally, an additional nine months).

Companies must make partial payments of corporate tax during the year, which are known as preliminary assessments. The preliminary assessments are based on the expected final assessment. For 2008, the assessments are levied according to the following schedule:

- The first preliminary assessment is due on 31 January 2008. The tax administration may estimate the profits by applying a percentage to the average fiscal profit of the previous two years. If the taxpayer can plausibly establish that the expected final assessment will be a lower amount, the preliminary assessment is based on that amount.
- The second preliminary assessment is due at the end of the eighth month of 2008. This preliminary assessment is derived from an estimate made by the taxpayer.

These preliminary assessments may be paid in as many monthly installments as there are months remaining in the year.

The final assessment is made within three years from the time the tax liability arose. If a higher tax liability is established than that shown in the tax return, interest is charged at a rate equal to the deposit rate established by the European Central Bank. If less tax is payable than already paid on preliminary assessments, interest is paid at the same rate on the refund.

Interest is charged or paid if an assessment is dated after 1 July of the tax year (assuming the tax year is the calendar year) and if a balance of tax is refundable or payable. This rule applies to all types of assessments (preliminary, final and additional).

The tax authorities may impose arbitrary assessments if the taxpayer fails to file a return. For 2008, the amount of tax due may be increased by up to €1,134.

Additional assessments may be imposed if, as a result of deliberate actions by the taxpayer, insufficient tax has been levied. A penalty of 100% of the additional tax due may be levied. Depending on the degree of wrongdoing, this penalty is normally reduced to 25% or 50%.

*Advance Tax Rulings.* An Advance Tax Ruling (ATR) provides upfront certainty regarding the tax consequences of an intended transaction or transactions. ATRs can cover a wide range of issues. A request for an ATR must be sent to the competent tax inspector. If advance certainty is requested regarding the applicability of the participation exemption, the tax consequences of hybrid finance structures or the existence of a permanent establishment in the Netherlands, the competent tax inspector must submit the request to the advance pricing agreement (APA)/ATR team of the Tax Office for Large Enterprises in Rotterdam for binding advice.

APAs may be issued with respect to transfer pricing (see Section E).

ATRs are not granted in the following circumstances:

- The ATR is requested by a company that is primarily engaged in the receiving of interest and royalties within a group of companies but does not have sufficient presence in the Netherlands, regardless of the name given and the form used for such activities.
- The ATR is requested by a company that is engaged in activities with no substantial risks. However, an ATR may be granted if the company filing the request agrees that information may be provided to the tax authorities of the source country. No credit for foreign withholding tax is given in these situations.

**Dividends Tax.** The standard rate of dividends tax is 15%. Under the participation exemption (see Section C), dividends paid by resident companies to other resident companies are usually tax-free.

Effective from 1 January 2007, Dutch dividend withholding tax is not imposed on a dividend distribution from a Dutch company to a qualifying entity in another European Union (EU) member state that owns at least 5% of the nominal paid-up share capital of the payer. The qualifying entities are specified in the EU Parent-Subsidiary Directive. The threshold of 5% may be even lower in certain circumstances. An example of such a situation is one in which the Dutch participation exemption would have applied to benefits derived by the EU shareholder from its Dutch subsidiary if the EU shareholder was a resident of the Netherlands. In addition, a voting rights criterion has been introduced that applies only to distributions to certain countries (for example, the United Kingdom). In addition, effective from 1 January 2007, a minimum holding period is no longer required.

*Measures to Combat Dividend Stripping.* The Dividend Tax Act provides measures to combat dividend stripping. Under these measures, a reduction of dividend withholding tax is available only if the recipient of the dividends is regarded as the beneficial owner of the dividends. The measures provide that a recipient of dividends is generally not regarded as the beneficial owner if the following circumstances exist:

- The dividend recipient did something in return for the payment of the dividends as part of a series of transactions;
- It is likely that the payment of the dividends benefits a person who would have been entitled to a lesser (or no) reduction, exemption or refund of dividend tax than the recipient; and



- The person benefiting from the dividends directly or indirectly maintains or acquires an interest in the share capital of the payer of the dividends that is comparable to the person's position in the share capital before the series of transactions.

*Non-investment Companies.* Non-investment companies that are listed on the stock exchange are not required to withhold dividends tax when they repurchase their own shares if they satisfy certain requirements. One of these requirements is that the company must not have increased its share capital in the four years preceding the repurchase. Effective from 1 January 2006, this requirement does not apply if the share capital was increased for bona fide business reasons.

*Credit for Dividend Withholding Tax.* A Dutch intermediate company may credit a portion of the foreign dividend withholding tax imposed on dividends received against the Dutch withholding tax due on its dividend distributions if certain conditions are satisfied. The credit is generally 3% of the gross amount of qualifying dividends received. However, if the dividends received are not passed on in full by the Dutch intermediate company, the credit is 3% of the dividend distribution made by the Dutch intermediate company.

To claim the credit, the Dutch intermediate company withholds the Dutch withholding tax at the appropriate rate, but remits only a portion of the tax to the Dutch tax authorities. For example, if the applicable withholding tax rate on dividends distributed by a Dutch intermediate company in 2008 is 15%, only 12% (15% minus 3%) of the distribution must be paid to the Dutch tax authorities. As a result of this procedure, the Dutch intermediate company receives the benefit of the credit rather than its shareholders. The Dutch intermediate company is not subject to Dutch corporate income tax on this benefit.

**Foreign Tax Relief.** A unilateral decree for the avoidance of double taxation provides relief for resident companies from Dutch tax on income, such as foreign business profits derived through a permanent establishment abroad, if no tax treaty applies.

## **C. Determination of Taxable Income**

**General.** The fiscal profit is not necessarily calculated on the basis of the annual financial statements. In the Netherlands, all commercial accounting methods have to be reviewed to confirm that they are acceptable under fiscal law. The primary feature of tax accounting is the legal concept of "sound business practice."

Expenses incurred in connection with the conduct of a business are, in principle, deductible. However, certain expenses are not deductible, such as fines and penalties, and expenses incurred with respect to a crime. For companies that do not have shareholders with substantial interests, no other restrictions exist, except with respect to the deductibility of interest. For other companies, certain expenses are partially deductible, such as meals, drinks, and conferences. If expenses exceed normal arm's length charges and are incurred directly or indirectly for the benefit of shareholders or related parties, the excess is considered a nondeductible profit distribution (a dividend). Restrictions are imposed on the deductibility of interest (see Section E).

Taxpayers must calculate their taxable income in euros. On request, Dutch corporate tax returns may be calculated in the functional currency of the taxpayer, provided the financial statements of the relevant financial year are prepared in that currency. The financial statements may be expressed in a foreign currency if it is justified by the company's business or the international nature of the company's group. If this regime is applied, in principle, the functional currency must be used for at least 10 years.

**Conversion of Debt into Equity.** If a debt with a book value exceeding the fair market value of the receivable is transferred into formal or informal share capital or profit-sharing rights of the debtor, a recapture of the write-down takes place only at the level of the creditor. The recapture is limited to cases in which the receivable is written down against taxable income of the creditor or a group company and the participation exemption applies. The recapture does not result in immediate taxation. Instead, the recapture is added to a revaluation reserve that is released as the value of the participation in the debtor increases.

**Inventories.** Inventories are generally valued at the lower of cost or market value, but the last-in, first-out (LIFO) and the base stock methods of valuation are acceptable if certain conditions are fulfilled. Both of these make it possible to defer taxation of inventory profits. Valuation under the replacement-cost method is not accepted for tax purposes.

**Provisions.** Dutch law permits the creation of tax-free equalization and reinvestment reserves.

The equalization reserve may be established in anticipation of certain future expenditure that might otherwise vary considerably from year to year, such as ship maintenance, overhauling, pension payments or warranty costs.

If certain conditions are met, the book profit arising from the disposal of a tangible or intangible business asset may be carried forward and offset against the cost of a reinvestment asset. This is known as a reinvestment reserve. The reinvestment asset must be purchased within three years after the year in which the reinvestment reserve was established. If a reinvestment asset is not purchased within three years after the establishment of the reinvestment reserve, the amount in the reinvestment reserve is included in taxable income for corporate income tax purposes in the third year following the year in which the reinvestment reserve was established. The offset of the book profit may not reduce the book value of the reinvestment asset below the book value of the asset that was sold. An amount that cannot be offset as a result of the rule described in the preceding sentence may continue to be carried forward if the condition of the same economic function for the reinvestment does not apply (see below). If the depreciation period for the reinvestment asset is more than 10 years or if the reinvestment asset is not depreciable, the reinvestment asset must fulfill the same economic function as the asset that was sold. The condition of the same economic function for the reinvestment does not apply to reinvestment assets with a depreciation period of 10 years or less. For details regarding measures combating trade in companies with reinvestment reserves, see Section E.

**Participation Exemption.** All corporations located in the Netherlands (except qualified investment companies that are subject to a corporate income tax rate of 0%), including holding companies, are in principle exempt from Dutch corporation tax on all benefits connected with certain qualifying shareholdings. Benefits include cash dividends, dividends-in-kind, bonus shares, “hidden” profit distributions and capital gains realized on disposal of the shareholding. A capital loss that might result from the disposal of the shareholding is similarly nondeductible (but a liquidation loss of a subsidiary company is, in principle, deductible).

The participation exemption applies to all holdings of 5% or more of the nominal paid-up capital of the subsidiary, unless the participation is a “low-taxed portfolio participation” (see below). A less than 5% direct shareholding may be a qualifying participation if another company in the group owns a stake of at least 5%. If the shareholding drops below the 5% threshold as a result of a dilution or another event, the participation exemption may still apply for a period of three years from the date the 5% threshold is no longer met. A condition for applying the participation exemption during the three year period is that the shareholding must have been owned by the Dutch shareholder for more than one year during which the Dutch shareholder was able to fully benefit from the Dutch participation exemption. If the participation can be considered a “low-taxed portfolio participation” on a particular date, the Dutch shareholder may no longer benefit from the participation exemption beginning on such date. If under the terms of a tax treaty with another EU member state the dividend tax is reduced according to a voting rights criterion (such as under the treaties with Germany, Ireland and the United Kingdom), a participating interest also qualifies if the parent company controls at least 5% of the voting rights of the company located in the other member state.

Instead of the participation exemption, a credit system applies to income derived from a low-taxed portfolio participation. Under this system, the income is grossed up and taxed at the standard Dutch corporate tax rate, and a credit is allowed for underlying taxes. A “low-taxed portfolio participation” is defined as a participation satisfying the following conditions:

- More than 50% of the assets of the participation, directly or indirectly, consist of free portfolio investments; and
- Using Dutch principles, the participation is not subject to tax on profits at an effective rate of at least 10%.

For such purposes of the above definition, the patent and group interest boxes are not taken into consideration. The following are examples of portfolio investments: interest-bearing bank deposits; loan receivables; bonds; immovable property; securities; shareholdings of less than 5%; group financing receivables; and leased real estate. The portfolio investments are considered “free” if the investments are not used in the course of the business of the company. Real estate participations are excluded from the definition of a low-taxed portfolio participation. As a result, the participation exemption applies to benefits from a real estate participation. A participation is considered a real estate participation if, on a consolidated basis, immovable property accounts for at least 90% of the assets of the company in which the Dutch shareholder has a

participation. An exception applies to real estate that is owned by Dutch tax-exempt investment funds.

The general credit equals 5% of income derived from a low-taxed portfolio participation. It is not granted if the subsidiary in which the direct participation is held does not owe any profits tax. For income derived from a low-taxed portfolio participation that qualifies under the EU Parent-Subsidiary Directive, the taxpayer can alternatively choose to credit the actual underlying tax. Low-taxed portfolio participations in which a minimum 25% shareholding is held and of which 90% or more of the assets, directly or indirectly, consist of free portfolio investments, should be marked to market by the Dutch taxpayer. The credit is also allowed for capital gains.

Subject to prior approval of the Dutch tax authorities, a taxpayer can apply the participation exemption to the foreign-exchange results relating to the debts incurred to finance the acquisition of a qualifying participation or relating to financial instruments hedging such exchange exposure.

As a result of the ruling of the European Court of Justice (ECJ) in the *Bosal* case, a significant rule relating to the participation exemption was amended. Effective from 1 January 2004, the limitation on the deduction of expenses with respect to qualifying foreign participations is abolished. Under the prior law governing the participation exemption, expenses incurred with respect to qualifying foreign participations, such as interest expenses, were not deductible for Dutch corporate income tax purposes, unless the expenses were instrumental in generating Dutch taxable income. In the *Bosal* case, the ECJ ruled that this measure was incompatible with EU law and, consequently, was not applicable to expenses related to qualifying EU participations. Under the amended participation exemption, expenses relating to EU participations and non-EU participations are deductible. However, costs and expenses incurred on disposal of a participation, such as lawyers' fees, stock-exchange duties and notary fees, are not deductible.

The rules governing the participation exemption include the following antiabuse measures:

- If a written-off loan to a related subsidiary is sold to a related foreign person or a foreign group company, the written-off amount is, in principle, treated as taxable income for corporate income tax purposes.
- If a written-off loan to a subsidiary is converted into an investment in shares, informal capital or profit participation rights, the written-off amount is regarded as taxable income for corporate income tax purposes. The recapture of a written-off loan to a subsidiary is added to a revaluation reserve that is released as the value of the participation in the debtor increases.
- Other antiabuse measures concern the incorporation of a permanent establishment and the treatment of losses on the liquidation of a participating interest.

*Earn-out Settlement and Balance Sheet Guarantee.* Under prior legislation and case law, if a participation was sold for consideration that partially consisted of future uncertain payments, such as a share of future profits, both the seller and purchaser of the participation were required to estimate the value of the future pay-

ments. Any fluctuations in value were taxable or tax-deductible. Effective from 1 January 2002, any gains or losses on the seller's receivable or the purchaser's payable are subject to the participation exemption. As a result, the gains or losses are no longer taxable or tax-deductible. The measure also applies to payments by the seller of the participation arising from a guarantee on the balance sheet. These payments are also covered by the measure described above and are therefore subject to the rules of the participation exemption.

**Tax Depreciation.** In principle, depreciation is based on historical cost, the service life of the asset and the residual value. Effective from 1 January 2007, depreciation is limited on buildings, goodwill and other assets. Despite those restrictions, a write down to lower market value remains possible.

*Buildings.* Effective from 1 January 2007, buildings (including the land and surroundings on which they were erected) can be depreciated only for as long as the tax book value does not drop below the threshold value. Buildings may not be written down to a market value lower than the threshold value. The threshold value of buildings held as a portfolio investment equals the value provided in the Law on Valuation of Real Estate (Wet Waardering Onroerende Zaken), known as the WOZ value. The threshold value of buildings used in the taxpayer's business or a related party's business equals 50% of the WOZ value. In principle, the WOZ value represents the fair market value of the real estate. Beginning in January 2008 the WOZ value will be determined annually by the local municipality. If the threshold value increases, tax depreciation that had been previously claimed is not recaptured.

*Goodwill and Other Assets.* Goodwill must be depreciated over a period of at least 10 years. As a result, the maximum annual depreciation rate is 10%. If the goodwill is useful for a longer period, this period must be taken into account. For other assets such as inventory, cars and computers, the depreciation is limited to an annual rate of 20% of historical cost.

**Groups of Companies.** The fiscal unity regime was revised, effective from 1 January 2003. The following are significant aspects of the revised regime:

- To elect a fiscal unity, a parent company must own at least 95% of the shares of a subsidiary;
- Both Dutch and foreign companies may be included in a fiscal unity if their place of effective management is located in the Netherlands;
- A permanent establishment in the Netherlands of a company with its effective management abroad may be included in a fiscal unity; and
- A subsidiary may be included in the fiscal unity from the date of acquisition.

Advantages of such group treatment include the following:

- Losses of one subsidiary may be offset against profits of other members of the group;
- Reorganizations, including movements of assets with hidden reserves from one company to another, have no direct fiscal consequences; and
- Intercompany profits may be fully deferred.

The ruling of the European Court of Justice (ECJ) in the *Marks & Spencer* case suggests that the restriction that limits the fiscal unity regime to companies with their place of effective management located in the Netherlands does not violate EU law.

**Relief for Losses.** Effective from 1 January 2007, losses of a company may be carried back one year and carried forward nine years. The prior law provided for a three-year loss carryback and an indefinite loss carryforward. A grandfather rule allows all losses incurred in or before 2002 to be carried forward until 2011.

Effective from 1 January 2004, restrictions on loss relief for holding and financing companies were introduced. The restrictions apply to a company if holding activities and direct or indirect financing of related parties account for at least 90% of the company's activities during a financial year.

A company meeting the above condition may offset losses from a financial year against profits earned in another financial year only if its activities in both financial years consist of (or almost totally consist of) holding activities and the direct or indirect financing of related parties. This rule is designed to prevent companies from offsetting losses incurred in years in which they primarily engaged in holding and financing activities against profits of other activities that are subsequently begun or acquired.

A second restriction provides that the balance of the related-party receivables and the related-party payables of the company during the financial year in which the profits are realized may not exceed this balance in the financial year in which the losses were incurred. This rule is designed to prevent companies from using losses by increasing the profitable finance activities. However, the company may make a case that the balance of the receivables and payables has increased for business reasons and not only for the purpose of using the loss carryforwards.

For details regarding measures combating trade in companies with loss carryforwards, see Section E.

#### **D. Value-Added Tax**

Value-added tax is imposed on goods delivered and services rendered in the Netherlands other than exempt goods and services. The general rate is 19%. Other rates are 0% and 6%.

#### **E. Miscellaneous Matters**

**Dutch Intermediate Companies.** The Netherlands may be used as a base for intermediate companies. These are primarily holding companies, finance companies and royalty companies. The purpose of using the Netherlands for such intermediate companies is to reduce withholding taxes on passive income streams. Reduction of the withholding tax burden is brought about by the extensive tax treaty network of the Netherlands. The actual rate of withholding tax on the income of the intermediate company depends on which countries the income comes from and the provisions in the treaties with those countries. Measures, which are effective from 1 January 2002, counter the use of companies that perform financing or licensing activities within a group if the activities do not involve any risks. No credit of foreign withholding tax is granted with respect to such activities. A safe harbor test determines whether risk is involved.

The Netherlands levies no withholding tax on interest and royalties. Furthermore, because of the participation exemption, a Dutch intermediate company is usually exempt from Dutch corporate tax on dividends from, and capital gains connected with, a foreign shareholding.

### **Tax Arrangements with Aruba and the Netherlands Antilles**

*Aruba.* If an Aruban holding company owns at least 25% of a Dutch intermediate holding company, the Dutch company must withhold 7.5% from dividends paid to the Aruban holding company unless the Aruban company is taxed on the dividends received at a profit tax rate of at least 5.5%. In that case, the withholding tax rate is 5%. The 5% and 7.5% rates apply only if the effective combined withholding tax rate and the profit tax rate in Aruba is at least 8.3%. For dividends not qualifying for the 5% or 7.5% rates (such as if the parent company owns less than 25% or the shareholder is not a company), the Dutch withholding tax is 15%. Effective from 1 January 2007, the grandfather period for the offshore regime in Aruba was terminated. As a result, Aruban limited liability companies that were formerly under the offshore regime are now subject to the regular profit tax rate in Aruba, unless these companies filed a notification to be treated as a transparent entity, effective from 1 January 2007.

*Netherlands Antilles.* Effective from 1 January 2001, the Netherlands Antilles amended their tax laws. Under these amendments, the offshore tax rates of 2.4% to 3% were abolished, and a regime conforming to Organization for Economic Cooperation and Development (OECD) standards was introduced. Under the New Fiscal Regime (NFR), a fixed profit tax rate of 34.5% and a 100% participation exemption apply to dividends qualifying under Article 11, Paragraph 3 of the Tax Arrangement for the Kingdom of the Netherlands. Companies qualifying as offshore companies can continue to benefit from the offshore tax rates through 2019, but they may benefit from the 100% participation exemption of the NFR without losing their status as offshore companies. As a result, a 100% participation exemption applies to dividends and capital gains from qualifying Dutch subsidiary companies, regardless of whether the recipient is subject to the NFR provisions or the offshore tax provisions. Withholding tax at a rate of 8.3% is imposed on dividend distributions made by a Dutch company to a Netherlands Antilles holding company that owns at least 25% of the payer if the combined effective tax rate of the Netherlands dividend withholding tax and Netherlands Antilles profit tax on gross dividend distributions is at least 8.3%. The Dutch withholding tax rate is 15% for dividend distributions not qualifying for the 8.3% rate (such as if the parent company owns less than 25% of the payer or if the recipient is not a company).

**Foreign-Exchange Controls.** No real restrictions are imposed on the movement of funds into and out of the Netherlands.

### **Debt-to-Equity Rules and Other Restrictions on Deductibility of Interest**

*Statutory Thin-Capitalization Rules.* Effective from 1 January 2004, the corporate income tax law in the Netherlands includes thin-capitalization rules. These rules are designed to avoid the erosion of the Dutch tax base within corporate groups. Under the new

rules, interest expenses (and other costs) with respect to related-party loans (or deemed related-party loans) may be partly or completely disallowed if the taxpayer is part of a group, as defined under Dutch generally accepted accounting principles (GAAP)/international financial reporting standards (IFRS).

In principle, deductions for interest on external (bank) debt directly obtained by the taxpayer are not disallowed. However, if such external debt is formally granted by a third party but is in fact owed to a related party, the thin-capitalization rules apply.

The rules provide two ratios to determine the amount of excess debt. Under the first ratio, which is a fixed ratio, the average fiscal debt may not exceed more than three times the company's average fiscal equity plus €500,000. For the purpose of this ratio, debt is defined as the balance of the company's loan receivables and loan payables. The balance sheet for tax purposes is used to determine the average debt and equity. This rule is especially relevant to Dutch companies involved in back-to-back finance operations. Effective from 1 January 2007, the definition of loan is broadened to include finance lease receivables and payables and hire-purchase receivables and payables. As a result, the debt of leveraged lease companies is reduced by netting it against their finance lease receivables.

Alternatively, when the company files its corporate tax return, it may elect to apply for the group ratio. Under this alternative, the company may look at the commercial consolidated debt-to-equity ratio of the (international) group of which it is a member. If the company's commercial debt-to-equity ratio does not exceed the debt-to-equity ratio of the group, the tax deduction for interest on related-party loans is allowed.

*Recharacterization of Loans as Equity.* In decisions of the Dutch Supreme Court, loans have been recharacterized as informal capital contributions in the following circumstances:

- The loan agreement is deemed to be a sham transaction because the parties involved actually intended to make a capital contribution to the subsidiary;
- The loan is granted to a company that is incurring large losses when the loan is granted, and it is clear to the lender that the debtor will not be able to wholly or partly pay back the loan; and
- The loan is granted under such conditions that the lender, through the loan, effectively takes on the risks associated with investing in the activities of the company similar to those taken by a shareholder (hybrid loan).

In such situations, the participation exemption applies to a loan granted to a subsidiary in which a qualifying participation is held because the payments of interest on the recharacterized loans are considered distributions. In addition, the loss resulting from the lower valuation of the receivable is not deductible for corporate income tax purposes.

Effective from 1 January 2007, the third item listed above is formally codified in the Corporate Income Tax Act. However, the determination of whether the loan is a hybrid loan is left to the case law. According to case law of the Dutch Supreme Court, a hybrid loan has the following features:



- The interest paid on the loan is completely or almost entirely dependent on the profits of the company;
- The loan is subordinated to all unsecured ordinary creditors; and
- The loan has a maturity date of more than 50 years or can be called only in the event of liquidation or bankruptcy of the borrower.

If the creditor holds a participation qualifying for the participation exemption, hybrid loan receivables are “dragged along.” Even if the creditor has direct share ownership in the debtor of the hybrid loan, it is possible to claim participation exemption benefits on a hybrid loan made to a group company. For example, a Dutch company can benefit from the participation exemption with respect to a hybrid loan granted to its Spanish sister company. In addition, the “dragging along” of a hybrid loan applies even if the borrower claims a deduction for the interest payments in its country of residence. Payments on hybrid loans falling within the scope of the measures described above are treated as distributions of profit subject to the Dutch dividend withholding tax of 15%. Issues may arise as to the effect of the new rules in treaty situations.

*Other Base Erosion Provisions.* The deduction of interest paid, including related costs and currency exchange results, by a Dutch company on a related-party loan is disallowed to the extent that the loan relates to one of the following transactions:

- Dividend distributions or repayments of capital by the taxpayer or by a related Dutch company to a related company or a related individual resident in the Netherlands;
- Capital contributions by the taxpayer, by a related Dutch company or by a related individual resident in the Netherlands into a related company; or
- The acquisition or extension of an interest by the taxpayer, by a related Dutch company or by a related individual resident in the Netherlands in a company that is related to the taxpayer after this acquisition or extension.

This interest deduction limitation does not apply if either of the following conditions are satisfied:

- The loan and the related transaction are primarily based on business considerations.
- At the level of the creditor, the interest on the loan is subject to a tax on income or profits that results in a levy of at least 10% on a tax base determined under Dutch standards, disregarding the patent and group interest boxes (see Section B). In addition, such interest income may not be set off against losses incurred in prior years or benefit from other forms or types of relief that were available when the loan was obtained. In addition, the loan may not be obtained in anticipation of losses or other types of relief that arise in the year in which the loan was granted or in the near future. Effective from 1 January 2008, even if the income is subject to tax of at least 10% at the level of the creditor, interest payments are not deductible if the tax authorities can demonstrate it to be likely that the loan or the related transaction is not primarily based on business considerations. The measure described in the preceding sentence applies to loans that were in existence on 1 January 2008, with no grandfathering.

**Transfer Pricing.** The Dutch tax law includes the arm's length principle (codified in the Corporate Income Tax Act) and contains specific transfer-pricing documentation requirements. Transactions between associated enterprises (controlled transactions) must be documented. Such documentation should include a description of the terms of the controlled transactions, the entities (and permanent establishments) involved and a thorough analysis of the so-called five comparability factors (both from the perspective of the controlled transactions and companies and uncontrolled transactions and companies), of which the functional analysis is the most important. The documentation must establish how transfer prices were determined and provide a basis for determining whether the terms of the intercompany transactions would have been adopted if the parties were unrelated. If such information is not available on request in the case of an audit or litigation, the burden of proof with respect to the arm's length nature of the transfer prices shifts to the taxpayer. As a result, the taxpayer is exposed to possible noncompliance penalty charges. Taxpayers can use the Dutch transfer-pricing decrees for guidance. These decrees provide the Dutch interpretation of the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines.

Advance pricing agreements (APAs) are available. APAs provide taxpayers with upfront certainty about the arm's length nature of transfer prices. APAs can be entered into on a unilateral, bilateral or multilateral basis (that is, with several tax administrations). APAs may cover all or only part of the controlled transactions, including transactions involving permanent establishments. The term of an APA may vary depending on the situation, but, in general, an APA is valid for four or five years. The Dutch APA program also allows the use of rollbacks to apply the agreed transfer-pricing methodology on a retrospective basis.

### **Antiavoidance Legislation**

*General.* Dutch tax law contains the *fraus legis* doctrine, which provides that a legally correct transaction that evades the intent of the law may be replaced by the nearest similar transaction that does not abuse the law. The tax authorities can apply the *fraus legis* doctrine if the following conditions are fulfilled:

- The primary purpose of a transaction is to avoid the imposition of tax; and
- The taxpayer's act frustrates the spirit and purpose of the tax legislation.

*Measures Combating Trade in Loss Companies and Reinvestment Reserve Companies.* The Corporate Income Tax Act contains specific rules to combat the trade in so-called "loss companies" and "reinvestment reserve companies."

If 30% or more of the shares of a company are transferred among shareholders or to new shareholders, in principle, the losses of the company may not be offset against future profits. However, many exceptions to this rule exist, but the company has the burden of proof with respect to the applicability of the exemptions.

A similar rule applies to a transfer of 30% or more of the shares of a company that has a reinvestment reserve on its balance sheet. In the year of the transfer of the shares, the amount of the reinvestment reserve is included in taxable income for corporate

income tax purposes. Many exceptions to this rule exist, but the company has the burden of proof with respect to the applicability of the exemptions.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under Dutch domestic law.

	<b>Dividends (b)</b>	<b>Interest (f)</b>	<b>Royalties (f)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Argentina	10 (a)	0	0
Armenia	0/5 (a)	0	0
Aruba	5/7.5/15 (a)(c)	0	0
Australia	15	0	0
Austria	0/5 (a)(b)	0	0
Bangladesh	10 (a)	0	0
Belarus	0/5 (a)(l)	0	0
Belgium	0/5 (a)(b)	0	0
Brazil	15	0	0
Bulgaria	5 (a)	0	0
Canada	5 (a)	0	0
China	10	0	0
Croatia	0/15 (a)	0	0
Czech Republic	0 (a)	0	0
Denmark	0 (a)	0	0
Egypt	0 (a)	0	0
Estonia	5 (a)	0	0
Finland	0 (a)	0	0
France	0/5 (a)(b)	0	0
Georgia	0/5/15 (t)	0	0
Germany	0/10 (a)(b)	0	0
Greece	0/5 (a)(b)	0	0
Hungary	5 (a)	0	0
Iceland	0 (a)(k)	0	0
India	10	0	0
Indonesia (r)	10 (a)	0	0
Ireland	0 (a)	0	0
Israel	5 (a)(m)	0	0
Italy	0/5/10/15 (b)	0	0
Japan	5 (a)	0	0
Kazakhstan	0/5 (a)	0	0
Korea	10 (a)	0	0
Kuwait	0/10	0	0
Latvia	5 (a)	0	0
Lithuania	5 (a)	0	0
Luxembourg	0/2.5 (a)(b)	0	0
Macedonia	0/15	0	0
Malawi	15	0	0
Malaysia	0 (a)	0	0
Malta	0/5 (a)(o)	0	0
Mexico	5 (h)	0	0
Moldova	0/5/15 (p)	0	0
Mongolia (g)	0/5/15	0	0
Morocco	10 (a)	0	0
Netherlands Antilles	8.3 (a)(c)	0	0
New Zealand	15	0	0
Nigeria	12.5 (a)	0	0

	<b>Dividends (b)</b>	<b>Interest (f)</b>	<b>Royalties (f)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Norway	0 (a)	0	0
Pakistan	10 (a)	0	0
Philippines	10 (a)	0	0
Poland	0/5/15 (s)	0	0
Portugal	0/10 (b)	0	0
Romania	0/5/15 (n)	0	0
Russian Federation	5 (a)	0	0
Singapore	0 (a)	0	0
Slovak Republic	0 (a)	0	0
South Africa	5 (a)	0	0
Spain	0/5 (a)(b)	0	0
Sri Lanka	10 (a)	0	0
Suriname	7.5/15 (a)	0	0
Sweden	0 (a)	0	0
Switzerland	0 (a)	0	0
Taiwan (q)	10	0	0
Thailand	5 (a)	0	0
Tunisia	0/20 (i)	0	0
Turkey	5 (a)	0	0
Uganda	0/5/15 (v)	0	0
Ukraine	0/5 (a)	0	0
USSR (d)	15	0	0
United Kingdom	0/5 (a)(b)	0	0
United States	0/5/15 (u)	0	0
Uzbekistan	5 (a)	0	0
Venezuela	0 (a)	0	0
Vietnam	5/7/10/15 (j)	0	0
Yugoslavia (e)	5 (a)	0	0
Zambia	5 (a)	0	0
Zimbabwe	10 (a)	0	0
Nontreaty countries	15	0	0

(a) The treaty withholding rate is increased to 15% (or other rate as indicated below) if the recipient is not a corporation owning at least 25% (Armenia, Bangladesh, Croatia, Iceland, Kazakhstan, Nigeria, Philippines, the United States and Uzbekistan, 10%) of the distributing corporation.

Czech Rep.	10%	Slovak Rep.	10%	Turkey	10/15/20%
Greece	15/35%	Spain	10/15%	Ukraine	20%
Japan	10/15%	Suriname	15/20%	Venezuela	10%
Morocco	25%	Thailand	10/15/20/25%	Zimbabwe	20%
Pakistan	20%				

(b) Dutch dividend withholding tax is not imposed on a dividend distribution from a Dutch company to a qualifying entity in another EU member state that owns at least 5% of the nominal paid-up share capital of the payer if certain other conditions contained in the EU Parent-Subsidiary Directive are met, such as the condition relating to qualifying entities. In addition, a voting rights criterion of 5% applies to distributions to certain countries (for example, the United Kingdom). No minimum holding period is required.

(c) For details, see Section E.

(d) The Dutch fiscal administration has indicated that the USSR treaty applies to all of the new republics that comprised the former USSR until the Netherlands enters into tax treaties with these republics. The Netherlands has entered into tax treaties with Belarus, Kazakhstan, Latvia, Lithuania and the Russian Federation. The withholding rates under these treaties are listed in the above table.

(e) The Dutch fiscal administration has indicated that the Yugoslavia treaty applies to the republics of Bosnia-Herzegovina, Slovenia and the Federal Republic of Yugoslavia (Montenegro and Serbia). The Netherlands and Croatia have entered into a tax treaty (see the listing in the above table).

(f) Interest and royalties are not subject to withholding tax under Dutch domestic law.

- (g) These treaties have been signed, but are not yet effective.
- (h) If the recipient is a corporation owning less than 10% of the distributing corporation, the rate is 15%.
- (i) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the payer. The 20% rate applies to other dividends.
- (j) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 50% of the capital of the payer or has invested in the payer more than US\$10 million or the equivalent in Dutch or Vietnamese currency. The 10% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 25% but less than 50% of the capital of the payer. The 15% rate applies to other dividends.
- (k) Under certain circumstances, Iceland may increase the rate to 15%.
- (l) The 0% rate applies if the recipient is a corporation that owns at least 50% of the shares of the payer and has invested ECU 250,000 in the share capital of the payer or if the recipient is a corporation owning at least 25% of the shares of the payer and the capital of the payer is guaranteed or insured by the government.
- (m) Israel may apply a 10% rate if the recipient is a corporation owning at least 10% of the payer and if the income out of which the dividend is paid is not taxable in Israel under legislation designed to stimulate investment.
- (n) The 0% rate applies if the recipient is a corporation owning at least 25% of the payer. The 5% rate applies if the recipient is a corporation owning at least 10% but less than 25% of the payer. The 15% rate applies to other dividends.
- (o) If legislation to stimulate investments applies to the payer and the participation exemption applies to the recipient, the Maltese tax on profits is reduced to 15%.
- (p) The 0% rate applies if the recipient of the dividends owns at least 50% of the capital of the payer. The 0% rate also applies if either of the following conditions are satisfied: the recipient has invested at least US\$300,000 in the payer; or the investment is guaranteed or insured by the government or government bodies of the other contracting state. The 5% rate applies if the recipient owns at least 25% of the capital of the payer. The 15% rate applies to other dividends.
- (q) The agreement does not have the formal status of a tax treaty but it serves as such.
- (r) Indonesia unilaterally cancelled the existing tax treaty between the Netherlands and Indonesia, effective from 1 January 2001. The Netherlands and Indonesia will continue to apply the existing treaty until a new tax treaty becomes effective. A new tax treaty between the countries, which is not yet effective, provides a withholding tax rate of 10% for all dividends.
- (s) Under a protocol to the treaty, until both states apply in full the EU Parent-Subsidiary Directive of 23 July 1990, the 0% rate applies if the recipient is a company that owns at least 25% of the capital of the payer of the dividend. The 5% rate applies if the recipient is a company that owns at least 10% of the capital of the payer of the dividend.
- (t) The 0% rate applies if the recipient is a company that owns at least 50% of the capital of the payer of the dividend. The 5% rate applies if the recipient is a company that owns at least 10% of the capital of the payer of the dividend.
- (u) The 0% rate applies if the recipient is a company that directly owns shares representing 80% or more of the voting power in the payer of the dividend and if other conditions are met. The 5% rate applies if the recipient is a company that holds directly at least 10% of voting power of the payer of the dividends. The 15% rate applies in all other cases.
- (v) The 0% rate applies if the recipient is a company owning at least 50% or more of the distributing company with respect to investments made, including increases of investments, after the entry into force of this treaty on 10 September 2006. The 5% rate applies if the recipient is a company that owns less than 50% of the distributing company. The 15% rate applies to other dividends. The competent authorities of the contracting states regulate in an agreement the application of the reduced rates of 0%, 5% and 15%.

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**A. At a Glance**

Corporate Income Tax Rate (%)	34.5 (a)
Capital Gains Tax Rate (%)	34.5 (a)
Branch Tax Rate (%)	34.5 (a)
Withholding Tax (%)	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 (b)

(a) Includes 15% island surcharges.

(b) Losses incurred by certain companies during their first four years of business may be carried forward indefinitely.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporate income tax is levied on resident and nonresident companies. Resident companies are those incorporated under Netherlands Antilles civil law, even if their management is located abroad, as well as companies incorporated under foreign civil law, but effectively managed and controlled in the Netherlands Antilles. For resident companies, corporate income tax is, in principle, levied on the aggregate amount of net profits earned from all sources during the company's accounting period. Nonresident companies are subject to tax on specific Netherlands Antilles income items, such as profits earned through a permanent establishment and income related to real property in the Netherlands Antilles, including interest derived from a mortgage on such real property.

**Tax Rates.** Resident and nonresident companies, including branches of foreign companies, are taxed at a standard effective rate of 34.5%, including island surcharges. However, this rate does not apply to companies qualifying for tax incentives, E-zone companies, offshore companies or Tax Exempt Companies. In conjunction with the introduction of the current law, the offshore regime was abolished, subject to grandfather rules.

It is expected that changes to the law will be introduced, probably effective from 2006. These changes will primarily affect international holding structures, Tax Exempt Companies (see *Tax Exempt Companies* below), shipping companies and the ruling policy (see *Ruling Policy* below).

No withholding taxes are imposed on remittances of profits by branches to their foreign head offices.

*Tax Incentives.* Reduced tax rates and other tax incentives are granted to new business enterprises engaged in certain activities, including industrial activities (through 2015, at the latest), tourism and land development.

*E-zone Companies.* Incentives are available under E-zone legislation. These incentives replaced the incentives that were previously available under the free zone legislation. The E-zone legislation offers tax incentives to e-commerce companies and trading companies with an e-strategy that locate their activities in the Netherlands Antilles. In principle, the activities of these companies must be focused on trading with, or providing services to, companies or persons located outside the Netherlands Antilles. Profits derived by E-zone companies from sales of goods or services to companies or individuals located in the Netherlands Antilles may not exceed 25% of total turnover. In general, E-zone companies are taxed at a rate of 2% (surtax included). However, for profits derived from sales of goods or services to companies or individuals located in the Netherlands Antilles (up to a maximum of 25% of total turnover), the standard corporate income tax rate of 34.5% applies. Tax losses may be carried forward to offset taxable profits in the following 10 years. No turnover tax or import duties are imposed on the following:

- Goods entering the E-zone;
- Services rendered by Netherlands Antilles companies to E-zone companies; and
- Products delivered by E-zone companies, or services rendered, to individuals or companies that are not resident in the Netherlands Antilles or to companies that are located in the E-zone.

*Offshore Companies.* In conjunction with the introduction of the current law in 2001, the offshore regime was abolished. However, under transitional rules, special incentives are available for qualifying offshore companies in existence before 1 January 2002. Offshore companies are resident companies beneficially owned by nonresidents that perform their business activities entirely abroad; that is, they earn foreign-source income only. Income derived by offshore companies (for example, royalties, and income from mutual funds, holding companies, portfolio investments, finance and service activities) is taxed at rates of 2.4% to 3%. Capital gains are exempt from tax. In addition, advance tax rulings may be obtained from the tax authorities to reduce the tax burden substantially. Profits derived from real estate located outside the Netherlands Antilles are exempt from tax. The tax rates of 2.4% to 3% are guaranteed through 2019. Consequently, the current law does not apply to these companies until 2019. However, offshore companies may irrevocably elect to be subject to the current law. Companies making the election are entitled to a tax-free step-up in basis.

Special transitional rules apply to companies incorporated after 30 June 1999. These companies may benefit from the offshore regime if they are regarded as having begun substantial activities by 1 January 2002.

*Tax Exempt Companies.* Tax Exempt Companies (TECs) are exempt from Netherlands Antilles profit tax. Only closed limited liability companies incorporated under Netherlands Antilles law may qualify as a TEC. TECs may engage only in investing in debt instruments, securities and deposits. To qualify as a TEC, a written request must be submitted to the tax inspector and certain conditions must be satisfied. TECs are not eligible for benefits under the Tax Regulation for the Kingdom of the Netherlands nor for any benefits under double tax treaties that the Netherlands Antilles may enter into in the future. Exchange of information measures apply to TECs. The Netherlands Antilles company laws contain measures designed to prevent TECs from being used for illegal activities. If a TEC loses its tax-exempt status, it is treated prospectively as an ordinary company subject to tax on its worldwide income, and it receives a tax-free step-up in basis.

*Ruling Policy.* As a result of the introduction of the current law, a new tax ruling policy was introduced. This policy complies with the latest international standards regarding transparency and ring-fencing. Various conditions for activities and the tax consequences for the activities are set forth in standard rulings, which can be obtained on a wide range of subjects. These rulings include the following: cost-plus rulings for intercompany support activities; minimum gross margin rulings for finance activities; participation exemption rulings for holding activities; and informal capital (cost-plus) rulings for intercompany trading activities. These rulings are usually valid for a five-year period, with an option for renewal for an additional five-year period.

**Capital Gains.** In general, except for offshore companies, no distinction is made between the taxation of capital gains and that of other income. All income is taxed at the corporate tax rate.

**Administration.** The standard tax year is the calendar year. However, on request and under certain conditions, a company may use its financial accounting year as its tax year.

Companies must file a provisional tax return within three months after the end of the financial year. This return must show taxable profit that is at least equal to the taxable profit shown on the most recently filed final tax return. Any tax due must be paid at the time of filing the return. An extension of time to file the return and pay the tax will not be granted. On request of the company, the Tax Inspector may consent to the reporting of a lower taxable profit than the taxable profit shown on the most recently filed tax return.

The final tax return must be filed within six months after the end of the financial year. Any difference between the tax due based on the provisional return and the tax due based on the final return must be settled at once. An extension of time may be obtained to file the final return and pay any balance of tax due shown in the return.



In general, offshore companies must file their final tax returns within six months following the end of the financial year. In practice, the tax authorities do not strictly enforce this deadline.

To ensure compliance with the rules described above, severe penalties may be imposed. The tax authorities may impose arbitrary assessments if the taxpayer fails to file a tax return. Additional assessments may be imposed if, as a result of deliberate actions by the taxpayer, insufficient tax is levied. A penalty of 100% of the additional tax due may be levied. Depending on the degree of wrongdoing, this penalty is normally 25% or 50%.

**Dividends.** Although a Dividend Withholding Tax Ordinance, which provides for a 10% withholding tax on certain dividend distributions, has been introduced, the ordinance does not yet apply and is not expected to enter into force in the foreseeable future.

**Foreign Tax Relief.** A 95% exemption from Netherlands Antilles profit tax is available for foreign business profits derived through a permanent establishment abroad.

Foreign tax relief is available under the Tax Regulation for the Kingdom of the Netherlands and under the tax treaty with Norway (see Section F).

### C. Determination of Taxable Income

**General.** Taxable profit must be calculated in accordance with "sound business practice"; it is not necessarily based on the annual commercial financial statements.

All expenses incurred in connection with the conduct of a business are, in principle, deductible. However, if expenses exceed normal arm's length charges and are incurred directly or indirectly for the benefit of shareholders or related companies, the excess is nondeductible. In addition, certain expenses, such as fines, penalties and expenses incurred with respect to crimes, are not deductible. Only 80% of representation expenses, as well as expenses incurred on meals, beverages, gifts and courses and seminars, is deductible. If expenses exceed normal arm's length charges and are incurred directly or indirectly for the benefit of shareholders or related companies, the excess is considered to be a nondeductible profit distribution (dividend).

In principle, interest expenses are deductible for tax purposes if the interest rate is determined on an arm's length basis. However, certain restrictions apply to the deduction of interest on loans connected to certain tax-driven transactions and intragroup reorganizations (including transactions involving a TEC [see Section B]). Under thin-capitalization rules, interest accrued or paid directly or indirectly to affiliated TECs may not be deductible.

**Participation Exemption.** Under a participation exemption, certain income derived from a qualifying shareholding in a company is either 100% (resident participation) or 95% (nonresident participation) tax exempt. Income that is tax exempt under the participation exemption includes dividends and capital gains, as well as foreign-exchange gains resulting from loans obtained to finance the participation.

In general, a shareholding qualifies for the participation exemption if it represents at least 5% of the share capital or voting power in a company or if the amount paid for the shareholding amounts to at least NAF 1 million (US\$560,000). For participations held in nonresident companies, no restrictions are imposed with respect to the activities of the nonresident company, and the nonresident company is not required to be subject to profit tax in its country of residence.

Expenses that are connected with the investment, including financing expenses, are not deductible if the income is 100% tax-exempt. If the income is 95% tax-exempt, 5% of the expenses connected with the investment is deductible. Deductible expenses include foreign-exchange losses on loans obtained to finance the participation. Five percent of capital and liquidation losses on shareholdings qualifying for the 95% tax exemption is deductible for tax purposes. These losses are not deductible if the shareholding qualifies for the 100% tax exemption.

Income derived from a qualifying shareholding in a Netherlands Antilles company is 100% tax-exempt. Income derived from a Netherlands company in which a Netherlands Antilles company owns at least 25% of the share capital is also 100% tax-exempt. Income derived from a Netherlands company in which a Netherlands Antilles company owns less than 25% of the share capital or from any qualifying participation in any company that is resident outside both the Netherlands Antilles and the Netherlands is 95% tax exempt. For the purpose of the participation exemption, TECs (see Section B) are treated as nonresident companies. Consequently, the 95% participation exemption applies to dividends from TECs and capital gains realized on participations in TECs.

**Tax Depreciation.** In general, assets are depreciated using the straight-line method. The following are some of the applicable rates.

Asset	Rate (%)
Commercial buildings	2 to 2.5
Industrial buildings	3 to 4
Office equipment	10 to 50
Motor vehicles	10 to 33 <sup>1</sup> / <sub>3</sub>
Plant and machinery	10 to 20

Fixed assets acquired by companies operating in the Netherlands Antilles may qualify for accelerated depreciation at a maximum annual rate of 33<sup>1</sup>/<sub>3</sub>% of the cost of the assets.

An investment allowance of 8% (12% for new buildings) is granted for acquisitions or improvements of fixed assets by companies operating in the Netherlands Antilles. The allowance is deducted from taxable income in the year of the investment and in the following year. The allowance is recaptured if the asset is sold within six years (15 years for buildings) of the date of the investment.

**Groups of Companies.** On written request, Netherlands Antilles resident companies may form a fiscal unity (tax-consolidated group). To qualify for a fiscal unity, the parent company must own at least 99% of the subsidiaries. A fiscal unity may include a Dutch company that has its place of effective management in the Netherlands

Antilles. The whole group is taxed as if it were one company, and as a result, the subsidiary companies are no longer individually subject to profit tax.

Advantages of fiscal unity treatment include the following:

- Losses of one subsidiary may be offset against profits of other members of the group;
- Reorganizations, including movements of assets with hidden reserves from one company to another, have no direct tax consequences; and
- Intercompany profits may be fully deferred.

**Relief for Losses.** Losses in a financial year may be carried forward for 10 years to be offset against profits of future years. No carryback is permitted. Losses incurred by certain companies during their first four years of business may be carried forward indefinitely.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Sales tax in Curaçao and Bonaire; a general consumption tax on goods delivered, imports, and services rendered by entrepreneurs (legal entities or individuals) in the Netherlands Antilles or services rendered abroad for use in the Netherlands Antilles; certain imports are exempt	
Standard rate	5
Insurance	6
Breads and medicines	0
Turnover tax in Saba, St. Eustatius and St. Maarten; levied on turnover generated from goods sold and services rendered on the islands	
Standard rate	3

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** For foreign investors that obtain a foreign-exchange license from the central bank, no restrictions are imposed on the movement of funds into and out of the Netherlands Antilles. In general, the central bank automatically grants foreign-exchange licenses for remittances abroad. Residents are subject to several foreign-exchange regulations imposed by the central bank. Many residents, however, may be granted nonresident status for foreign-exchange control purposes. Some reporting requirements exist for statistical purposes.

**Transfer Pricing.** The Netherlands Antilles tax law does not currently contain any specific intercompany pricing provisions. Intercompany charges should be determined on an arm's length basis.

## F. Tax Treaties

Provisions for double tax relief are contained in the tax treaty with Norway and in the Tax Regulation for the Kingdom of the Netherlands. Under a measure in the tax regulation, dividend distributions by a qualifying Dutch subsidiary to its Netherlands

Antilles parent company are effectively subject to an 8.3% Dutch dividend withholding tax. Negotiations are underway to reintroduce a 0% Dutch dividend withholding tax on distributions by such a Dutch subsidiary to qualifying Netherlands Antilles companies. The Netherlands Antilles does not impose withholding tax on payments from the Netherlands Antilles to residents of other countries.

The Netherlands Antilles government is in the early stages of exchange of information and tax treaty negotiations with several countries, including the United States. A bilateral tax treaty with Venezuela is in the final stage of conclusion.

The Netherlands Antilles government entered into bilateral agreements with the European Union member states with respect to the application of the European Union Council Directive on taxation of savings income. The Netherlands Antilles law to implement the directive took effect in July 2006.

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**A. At a Glance**

Corporate Income Tax Rate (%)	33 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	33 (a)
Withholding Tax (%)	
Nonresidents	
Dividends	30 (b)
Interest	15 (c)
Royalties from Patents, Know-how, etc.	15 (d)
Payments to Contractors	15
Branch Remittance Tax	0
Residents	
Dividends	33 (e)
Interest	19.5 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The corporate income tax rate is reduced to 30% for the 2008-09 and subsequent income years of companies. The 30% rate will apply from 1 April 2008 for companies with the standard year-end date of 31 March. For companies with an approved 31 December year-end date, the 30% rate will first apply for their income year ending 31 December 2008.
- (b) Final tax. The rate is reduced to 15% for portions of cash dividends that are fully imputed (see Section B). In addition, to the extent noncash dividends paid are fully imputed, no withholding tax is imposed. The rate is also reduced to 15% to the extent the dividends are fully credited under the dividend withholding payment system or under the conduit tax relief system or to the extent that imputation credits are passed on to foreign investors through the payment of supplementary dividends under the foreign investor tax credit regime.
- (c) Final tax if the recipient is not associated with the payer. For an associated person, this is a minimum tax (the recipient must report the income on its annual tax return, but it may not obtain a refund if the tax withheld exceeds the tax that would otherwise be payable on its taxable income). Under the Income Tax Act, associated persons include the following: any two companies in which the same persons have a voting interest of at least 50% and, in certain circumstances, a market value interest of at least 50% in each of the companies; two companies that are under the control of the same persons; and any company and any other person (other than a company) that has a voting interest of at least 25% and, in certain circumstances, a market value interest of at least 25% in the company. Interest paid by an approved issuer on a registered security to a nonassociated person is subject only to an approved issuer levy of 2% of the interest payable.
- (d) Final tax on royalties relating to literary, dramatic, musical or artistic works. For other royalties, this is a minimum tax.
- (e) See Section B.
- (f) The 19.5% rate applies to individuals only. The rate is increased to 39% if the recipient's tax file number is not supplied. Recipients may elect to have a 33% or 39% tax withheld from interest paid.

## B. Taxes on Corporate Income and Gains

**Income Tax.** Resident companies are subject to income tax on worldwide taxable income. Nonresident companies carrying on business through a branch pay tax only on New Zealand-source income.

A company is resident in New Zealand if it is incorporated in New Zealand, if it has its head office or center of management in New Zealand or if director control is exercised in New Zealand.

**Rate of Income Tax.** Resident and nonresident companies are subject to tax at a rate of 33% through the end of their 2007-08 income year. The corporate income tax rate is reduced to 30% for the 2008-09 and subsequent income years of companies. The 30% rate will apply from 1 April 2008 for companies with the standard year-end date of 31 March. For companies with an approved 31 December year-end date, the 30% rate will first apply for their income year ending 31 December 2008.

**Capital Gains.** No capital gains tax is levied in New Zealand. However, residents may be taxed on capital gains derived from many types of financial arrangements and from certain real and personal property transactions. These gains are subject to tax at the standard corporate tax rate.

**Administration.** The income year is from 1 April to 31 March. A company with an accounting period that ends on a date other than 31 March may apply to the Commissioner of Inland Revenue for permission to adopt an income year that corresponds to its accounting period. If the Commissioner approves an alternative income year, income derived during that year is deemed to have been derived during the year ending on the nearest 31 March. For this purpose, year-ends up to 30 September are deemed to be nearest the preceding 31 March, and year-ends after 30 September are deemed to be nearest the following 31 March.

Companies with year-ends from 1 April to 30 September must file tax returns by the seventh day of the fourth month following the end of their income year. All other companies must file their returns by 7 July following the end of their income year.

Provisional tax payments for income years up to the 2007-08 income year must be made in the fourth, eighth and twelfth months of the income year of the company. Provisional tax payments for the 2008-09 and subsequent income years must generally be made in the fifth, ninth and thirteenth months after the beginning of the company's income year. The first installment equals one-third of the provisional tax payable; the second installment equals two-thirds of the provisional tax payable, less the amount of the first installment; and the balance of the provisional tax is payable in the third installment. In general, the provisional tax payable in a year equals 105% of the income tax payable in the preceding year. For the 2008-09 and subsequent income years, companies that are registered for Goods and Services Tax (GST; see Section D) that meet certain criteria may elect to calculate their provisional tax under a GST ratio method and pay the provisional tax in installments when they file their GST returns, generally every two months.

Companies with year-ends from October to January must pay terminal tax by the seventh day of the eleventh month following

the end of the income year. Companies with a February year-end must pay terminal tax by the fifteenth day of the following January. All other companies must pay terminal tax by the seventh day of February following the end of their income year. The date for payment of terminal tax may be extended by two months if the company has a tax agent.

Several measures impose interest and penalties on late payments of income tax. For late payments or underpayments, the basic penalty equals 5% of the unpaid tax. This penalty is reduced to 1% if the tax is paid within a week after the due date. An additional penalty of 1% of the unpaid balance, compounding monthly, is also imposed. Interest may be payable if provisional tax paid at each installment date is less than the relevant proportion (generally, one-third for the first installment date, two-thirds for the second installment date and three-thirds for the third installment date) of the final income tax payable for the year. Conversely, interest may be credited on overpaid provisional tax.

Interest charges and the risk of penalties with respect to provisional tax may be reduced if provisional tax is paid under a tax-pooling arrangement through a Revenue-approved intermediary.

For the 2008-09 and subsequent income years, the risk of interest and penalties will be minimized for companies that use the GST ratio method for calculating and paying their provisional tax.

### **Dividends**

*Exempt Income.* Dividends received by New Zealand resident companies from other New Zealand resident companies are taxable. However, dividends received from a wholly owned subsidiary resident in New Zealand are exempt. Dividends received by New Zealand resident companies from nonresident companies are also exempt. However, the New Zealand resident company may be required to make a dividend withholding payment to the Inland Revenue Department (see below).

*Imputation System.* New Zealand's dividend imputation system enables a resident company to allocate to dividends paid to shareholders a credit for tax paid by the company. The allocation of credits is not obligatory; however, if a credit is allocated, the maximum credit is calculated at 33/67 of the dividend declared. Consequently, a dividend of NZ\$67 may have an imputation credit attached of up to NZ\$33. As a result of the reduction of the corporate income tax rate to 30% for the 2008-09 and subsequent income years, the maximum credit will be reduced to 30/70 of the dividend declared. However, transitional provisions will allow companies to choose to apply credits that have arisen from tax paid at 33%, up to a maximum ratio of 33/67 until 31 March 2010.

The imputation credits described above may not be used to offset nonresident withholding tax on dividends paid to nonresidents. However, a New Zealand company may pass on the benefit of such credits to nonresident investors through payments of supplementary dividends. The aim of this mechanism is to allow nonresident investors to claim a full tax credit in their home countries for New Zealand nonresident withholding tax. The New Zealand company may also claim a partial refund or credit with respect to its own New Zealand company tax liability.



Australian resident companies may also elect to maintain a New Zealand imputation credit account and collect imputation credits for income tax paid in New Zealand. New Zealand shareholders in an Australian resident company that maintains such an imputation credit account and attaches imputation credits to dividends can receive a proportion of the New Zealand imputation credits equal to their proportion of shareholding in the Australian company. Imputation credits must be allocated proportionately to all shareholders.

In general, the carryforward of excess credits for subsequent distribution must satisfy a 66% continuity-of-shareholding test. Interests held by companies or nominees are generally traced through to the ultimate shareholders. Listed, widely held companies and limited attribution foreign companies are entitled to special treatment. In effect, they are treated as the ultimate shareholder if their voting interest in other companies is less than 50% or if the actual ultimate shareholders would each have voting interests of less than 10% in the underlying company. The definition of a listed company includes companies listed on any exchange in the world that is recognized by the Commissioner of Inland Revenue. For carryforward purposes, direct voting or market value interests of less than 10% may be considered to be held by a single notional person, unless such an interest is held by a company associated with the company that has the carryforward.

*Dividend Withholding Payments.* Under the dividend withholding payment system, dividends received by a resident company from a nonresident are subject to a 33% (30% for the 2008-09 and subsequent income years) withholding payment to be made by the recipient to the Inland Revenue Department. The withholding payment is reduced by any foreign withholding tax paid on the dividend and, if certain conditions are satisfied, by a credit for underlying foreign tax (or by New Zealand imputation credits attached to dividends paid by Australian imputation credit account companies).

The company making the dividend withholding payment may pass the benefit of the payment to the shareholder by way of a credit attaching to dividends paid by the company. The credit may be available under either the imputation system or the foreign dividend withholding payment system. The unused portion of a dividend withholding payment credit can be refunded to the shareholder, but an excess imputation credit is not refundable.

If a resident company elects to be a conduit tax relief company, a withholding payment on dividends received from a nonresident may also be reduced to the extent that the resident company has nonresident shareholders. The benefit of this conduit tax relief is passed on to the nonresident shareholders through the payment of dividends and the attachment of conduit tax relief credits.

*Resident Withholding Tax.* For dividends paid to a resident company by another resident company that is not in a tax group with the recipient, the payer must deduct a withholding tax equal to 33%, having first allowed for any imputation credits attached to the dividend, unless the recipient holds an exemption certificate.

**Foreign Tax Relief.** In general, any tax paid outside New Zealand by a New Zealand resident taxpayer can be claimed as a credit

against the tax payable in New Zealand. The credit is limited to the amount of New Zealand tax payable on that income.

### **C. Determination of Trading Income**

**General.** Assessable income consists of all profits or gains derived from any business activity, including the sale of goods and services, commissions, rents, royalties, interest and dividends.

A gross approach applies to the calculation of taxable income. Under this approach, a company calculates its gross assessable income and then subtracts its allowable deductions to determine its net income or loss. If the company has net income, it subtracts any loss carry-forwards or group losses to determine its taxable income.

To be deductible, expenses must be incurred in deriving gross income or necessarily incurred in carrying on a business for the purpose of deriving gross income. Interest is now generally deductible for most New Zealand resident companies, subject only to the thin capitalization and conduit interest allocation rules (see Section E). Deductions for certain business entertainment expenses are limited to 50% of the expenses incurred. Capital expenditures are generally not deductible.

**Exempt Income.** The only major categories of exempt income are dividends received from a wholly owned subsidiary resident in New Zealand, dividends received from nonresident companies and dividends paid out of capital gains derived from arm's length sales of fixed assets and investments on winding up.

A specific exemption applies until 31 December 2009 for income derived by nonresident companies from certain oil and gas drilling and related seismic survey vessel activities in New Zealand's offshore permit areas.

**Inventories.** Stock in trade must generally be valued at cost. Market selling value may be used (but not for shares or "excepted financial arrangements") if it is lower than cost. Cost is determined by reference to generally accepted accounting principles, adjusted for variances between budgeted and actual costs incurred. Simplified rules apply to "small taxpayers," which are those with annual turnover of NZ\$3 million or less. A further concession applies to taxpayers with annual turnover of NZ\$1.3 million or less and closing inventory of less than NZ\$5,000.

**Depreciation.** The depreciation regime generally allows a deduction for depreciation of property, including certain intangible property, used in the production of assessable income. Most assets can be depreciated using the straight-line or the declining-balance methods. For assets valued at less than NZ\$2,000, a taxpayer may elect to pool the assets and apply the pool-depreciation method. Under the pool-depreciation method, the lowest rate applicable to any asset in the pool is used to depreciate all assets in the pool. A taxpayer may have more than one pool of assets. Assets in a pool must be used for business purposes only or be subject to Fringe Benefit Tax (see Section D) to the extent the assets are not used for business purposes. Buildings may not be pooled. Property costing NZ\$500 or less may be written off immediately.

Assets, other than intangible property, acquired before 1 April 1993 are depreciated at the rates provided under the prior depreciation regime.

A transitional system applies to assets, including certain intangible property, acquired from 1 April 1993 through the end of the taxpayer's 1994-95 income year (the income year ending nearest to 31 March 1995). Under the transitional system, a taxpayer could elect to use the depreciation rates under the prior regime or the economic depreciation rates set by the Commissioner of Inland Revenue, which are based on the effective useful life of an asset.

Assets acquired in a taxpayer's 1995-96 or subsequent income year must be depreciated using economic depreciation rates. In general, most of these assets, other than buildings and used imported motor cars, qualify for a 20% loading on the applicable depreciation rates for the 1995-96 and subsequent income years, if the assets were not previously used in New Zealand. In certain circumstances, a taxpayer may apply for a special depreciation rate. The formula for setting depreciation rates has changed for the 2005-06 income year and subsequent years, resulting in increased rates for most plant and equipment acquired on or after 1 April 2005, and reduced rates for buildings acquired on or after 19 May 2005. The following table provides some of the general straight-line and declining-balance depreciation rates applicable to assets acquired between the 1995-96 and 2004-05 income years and assets acquired in the 2005-06 and subsequent income years, before the addition of any loading.

Asset	Method			
	Declining-Balance		Straight-Line	
	1995-96 to 2004-05 Rate (%)	From 2005-06 Rate (%)	1995-96 to 2004-05 Rate (%)	From 2005-06 Rate (%)
Buildings	4	3	3	2
Calculators	50	67	40	67
Chairs (office)	15	16	10	10.5
Desks	12	13	8	8.5
Filing cabinets	12	13	8	8.5
Motor vehicles	15 to 40	16 to 50	10 to 30	10.5 to 40
Photocopiers	33	40	24	30
Typewriters	33	40	24	30

The rates for plant and machinery vary depending on the particular type of plant and machinery.

Tax depreciation is generally subject to recapture on the sale of an asset to the extent the sales proceeds exceed the tax value after depreciation. Amounts recaptured are included in assessable income in the year of disposal. If sales proceeds are less than the tax value after depreciation, the difference may be deducted as a loss in the year of disposal. However, such losses on buildings are deductible only if they occur as a result of natural disasters or other events outside the taxpayer's control.

**Special Deductions.** A few special deductions designed to achieve specific government objectives are available, such as certain deductions relating to petroleum, mining, forestry and agricultural activities.

**Research and Development Expenditure Tax Credits.** It is proposed that, effective from the 2008-09 income year, a research and development (R&D) tax credit will be available to entities that carry on business through a fixed place in New Zealand. The credit will equal 15% of eligible R&D expenditure incurred in and allocated to an income year. The R&D must be conducted predominantly in New Zealand and claimants must bear the financial and technical risks and have control over the R&D work and its results. R&D tax credits will be refundable to claimants with tax losses. In addition, amounts equal to the R&D tax credits will be credited to company claimants' imputation (franking) credit accounts, which is an additional advantage for such companies.

**Trading Losses.** Trading losses may be carried forward and offset against future taxable income if, at all times from the beginning of the year of loss to the end of the year of offset, a group of persons held an aggregate minimum voting interest in the company and, in certain circumstances, minimum market value interests of at least 49%.

**Group Losses.** Losses incurred within a group of companies may be offset against other group company profits either by election or subvention payments.

Subvention payments are intercorporate payments specifically made to effect the transfer of company losses. They are treated as deductions to the paying (profit) company and as taxable income to the recipient (loss) company. The loss company and the profit-making company must be in the same group of companies throughout the relevant period. The required common ownership is 66%.

Wholly owned corporate groups may elect income tax consolidation.

**Elective Regime for Closely Held Companies.** Qualifying companies with five or fewer shareholders may elect to be taxed similarly to partnerships.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Goods and Services Tax (GST), similar to a value-added tax, levied on the supply of goods and services and on imports	12.5
Fringe Benefit Tax (FBT), paid by the employer on the value of fringe benefits provided to employees and on noncash dividends distributed to shareholder-employees	64
(If benefits are attributable to particular employees, employers may elect to calculate FBT on the attributable benefits at rates of 17.65%, 26.58%, 49.25% and 63.93%. The rates vary depending on the employee's cash remuneration inclusive of the fringe benefits. Unattributed benefits provided to such employees are subject to FBT at a rate of 49%. As a further	

Nature of Tax	Rate (%)
alternative, employers may pay FBT at a rate of 63.93% on attributed benefits and at a rate of 49% on unattributed benefits.)	
Accident compensation levy, on gross salaries and wages, paid by Employer; rate (before residual and health and safety elements) varies according to industry class and may be reduced if the employer meets certain work safety criteria; certain employers may take direct responsibility under full self-cover or partnership discount plans	0.06 to 7.46
Employee Self-employed; rate (before residual and health and safety elements) varies according to industry class, incorporating income and non-income benefit portions (the calculation of which depends on the individual's earnings) and according to age and abatement factors if a guaranteed amount of weekly compensation is purchased	1.3
	0.09 to 14.05

## E. Miscellaneous Matters

**Antiavoidance Legislation.** Legislation permits the Inland Revenue Department to void any arrangement made or entered into if tax avoidance is one of the purposes or effects of the arrangement and is not merely incidental.

**Branch-Equivalent System.** Under the branch-equivalent system of taxation, New Zealand residents that have interests in the income of a controlled foreign company (CFC) are taxed on attributed income as if the CFC is a branch of a New Zealand resident company. A CFC is a foreign company under the control of five or fewer New Zealand residents or a group of New Zealand resident directors. In general, for the purposes of the CFC rules, control is more than 50% ownership. A New Zealand resident with an income interest greater than 10% is required to calculate and include in income the attributed foreign income or loss of the CFC. Branch-equivalent losses are quarantined. The branch-equivalent system does not apply to interests in a CFC that is resident in a "grey list country" (Australia, Canada, Germany, Japan, Norway, Spain [from the 2006-07 income year], the United Kingdom or the United States), unless branch profits of the CFC benefit from a foreign tax exemption or certain other specified relief.

Certain nondividend repatriations of funds by CFCs to New Zealand are effectively taxed to shareholders with an income interest of 10% or more. The annual increase in the CFC's investment in New Zealand property (as defined) resulting from these repatriations is measured at the end of the company's accounting year and is subject to foreign dividend withholding payment for corporate shareholders or income tax for shareholders who are individuals.

New Zealand's branch-equivalent system is currently under review. It is proposed that the grey list be abolished and that an active income exemption be enacted to replace it, effective from the 2009-10 income year.

**Foreign Investment Fund System.** New Zealand has a foreign investment fund (FIF) system that taxes the change in value of a New Zealand resident's interest in the FIF over an income year. The change in value includes income, capital growth and any exchange fluctuation.

The FIF regime generally applies to all offshore investments that are not CFC interests, including interests in foreign companies, foreign unit trusts, foreign life insurance, and foreign savings and superannuation funds.

The FIF rules do not apply to individuals owning FIF interests that cost less than NZ\$50,000 or to certain FIF interests of more than 10% in grey list country companies (other than life insurance and superannuation funds). Exemptions are also provided for certain employment-related foreign superannuation schemes and foreign private annuities and pensions as well as for the first four years that individuals who become resident in New Zealand hold interests in foreign life insurance funds and superannuation schemes, provided the individuals held these interests before they became resident in New Zealand.

As a result of reforms to the FIF rules, which generally apply for the 2007-08 and subsequent income years, a general exclusion of interests in grey list country companies no longer exists. Interests in certain Australian listed companies and unit trusts, certain venture capital investments in grey list country companies and shares held under certain employee share schemes may be excluded from the FIF rules if statutory criteria are met.

The four permissible methods for calculating FIF income have been a branch-equivalent method, a deemed rate of return method, a comparison of opening and closing values, and a method based on accounting profits. Effective from the 2007-08 income year, two other alternatives may generally be used if the FIF interest held is less than 10%. These two methods are the 5% fair dividend rate method and the cost method.

**Portfolio Investment Entities.** Effective from 1 October 2007, certain collective investment entities that elect the new Portfolio Investment Entity (PIE) regime will not be taxable on gains on the disposal of New Zealand and certain Australian shares. In addition, their income may generally be taxed at the corporate tax rate or at rates approximating their individual investors' marginal tax rates.

**Conduit Tax Relief.** New Zealand resident companies may be relieved from tax on attributed foreign income arising under the CFC regime and on FIF income calculated under the branch-equivalent or accounting profits methods to the extent that they have nonresident shareholders. Interest allocation rules limit conduit relief if companies allocate an excessive amount of interest expense to their New Zealand operations in comparison to the amount of interest expense allocated to foreign investments that are granted relief under these rules.

It is proposed that the conduit tax relief regime be abolished in conjunction with the reform of the branch-equivalent system for CFC interests.

**Transfer Pricing.** The transfer-pricing regime in New Zealand is aimed primarily at cross-border arrangements between associated parties. Taxpayers are able to adopt the method that produces the most reliable measure of arm's length consideration. The allowable methods are the comparable uncontrolled price method, the resale price method, the cost-plus method, the profit-split method and the comparable profits method. Binding rulings with respect to transfer-pricing issues are available from the Commissioner of Inland Revenue. New Zealand and countries with which New Zealand has concluded tax treaties may enter into multilateral advance pricing agreements under the transfer-pricing regime.

**Debt-to-Equity Ratios.** In conjunction with the transfer-pricing regime (see *Transfer Pricing* above), a thin-capitalization regime applies to New Zealand entities that are at least 50% owned or controlled by a single nonresident (however, interests held by persons associated with a nonresident may be included for the purpose of determining the nonresident's level of control). This regime denies interest deductions to the extent that the New Zealand entity's level of interest-bearing debt exceeds both a safe harbor debt to total assets ratio of 75%, and 110% of the ratio of interest-bearing debt to total assets of the entity's worldwide group. A netting rule excludes borrowings that are in turn loaned to the following: nonresidents that are not carrying on business in New Zealand through a fixed establishment; nonassociated persons; or associates that are subject to the thin-capitalization regime but are not in the lender's New Zealand group. This rule effectively exempts most finance companies and banks from the regime.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends %	Interest %	Royalties %
Australia	15	10	10
Austria (g)	15	10 (a)	10
Belgium	15	10	10
Canada	15	15	15
Chile	15	15 (e)	10
China	15	10 (a)	10
Czech Republic (g)	15	10 (a)	10
Denmark	15	10	10
Fiji	15	10	15
Finland	15	10	10
France	15	10 (a)	10
Germany	15	10 (a)	10
India	15	10 (a)	10
Indonesia	15	10 (a)	15
Ireland	15	10	10
Italy	15	10 (a)	10
Japan	15	15 (b)	15 (b)
Korea	15	10 (a)	10
Malaysia	15	15	15
Mexico	15	10 (a)	10
Netherlands	15	10 (a)	10
Norway	15	10 (a)	10
Philippines	15 (c)	15	15
Poland	15	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Russian Federation	15	10	10
Singapore	15	15	15
South Africa	15	10 (a)	10
Spain	15	10	10
Sweden	15	10	10
Switzerland	15	10	10
Taiwan	15	10	10
Thailand	15	15 (e)	10/15 (f)
United Arab Emirates	15	10 (a)	10
United Kingdom	15	10 (a)	10
United States	15	10 (a)	10
Nontreaty countries (d)	30	15	15

- (a) Interest paid to a contracting state or subdivision, to certain state financial institutions or with respect to certain state-guaranteed loans is exempt.
- (b) No article of the treaty limits the rate applicable to interest or royalties, and neither is included in the treaty definition of business profits. The 15% rate provided by the principal tax act is therefore shown in the table.
- (c) 25% if paid to a person other than a company.
- (d) See applicable footnotes to Section A.
- (e) The rate is 10% for interest paid to financial institutions, including insurance companies, or if the interest relates to arm's length sales on credit of equipment, merchandise or services. Interest paid to certain institutions of the government or the central bank is exempt.
- (f) The 10% rate applies to payments for the use of copyrights, industrial, scientific or commercial equipment, films, tapes or other broadcast matter. The 15% rate applies to other royalties.
- (g) At the time of writing, the exchange of instruments of ratification had not yet occurred. Consequently, the treaty had not entered into force in New Zealand.

## NICARAGUA

(Country Code 505)

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**A. At a Glance**

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30
Withholding Tax (%) (a)	
Dividends	0/10.5 (b)
Interest	22.5
Royalties from Patents, Know-how, etc.	21
Payments for Movies, Films, Radio and Television	9
Income Derived from Real Estate (c)	
With Buildings	21
Without Buildings	24
Transportation	
Air Transportation	1.5
Maritime Transportation	3
International Communications	1.5
Insurance and Bail Premiums	
Life Insurance	0.9
Fire Insurance	2.4
Maritime Transportation Insurance	3

Other Insurance	0.6
Musical and Artistic Public Spectacles	15
Compensation for Services	10.5
Branch Remittance Tax	10.5
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The withholding taxes apply to nonresident companies and individuals. The withholding tax rates are determined by applying the 30% corporate income tax rate to the imputed taxable income for the various activities. For details regarding the calculation of the imputed income amounts see Section C.
- (b) Dividends distributed by entities that have paid income tax at the corporate level on the distributed income are not taxable.
- (c) Income derived from real estate includes leases and subleases, and any other benefits resulting from the holding of title to real estate.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** The Nicaraguan tax system is based on an extended territorial principle. As a result, income derived from the following is subject to income tax: property located in Nicaragua; services rendered in Nicaragua; and business that is conducted or produces benefits in Nicaragua.

**Corporate Income Tax Rates.** The standard corporate tax rate is 30% of taxable income for both resident and nonresident companies.

Companies operating under certain special incentive regimes, such as Free Trade Zone companies, are exempt from income tax.

After the third year of operations, companies subject to income tax with total assets exceeding US\$150,000 are subject to a minimum tax equal to 1% of the monthly average of total assets. Special rules apply to financial entities.

**Capital Gains.** Capital gains are treated as ordinary income and are subject to tax at the standard corporate income tax rate. Tax on these gains is either withheld at source or subject to advance payments of corporate income tax.

**Administration.** The statutory tax year runs from 1 July through 30 June of the following calendar year. However, taxpayers may request one of the following special tax years: 1 April through 31 March; 1 October through 30 September; or 1 January through 31 December. Annual income tax returns must be filed within three months after the end of the tax year.

Companies must make monthly advance payments equal to 1% of monthly gross income. The advance payments are applied to the annual income tax liability.

**Dividends.** Dividends distributed by entities that pay income tax at the corporate level on the distributed income are not taxable to the recipient.

**Foreign Tax Relief.** Nicaragua taxes only income derived from Nicaraguan sources. Consequently, the domestic income tax law does not grant any relief for foreign taxes paid.

## C. Determination of Trading Income

**General.** Taxable income is computed in accordance with generally accepted accounting principles, subject to adjustments required by the Nicaraguan income tax law.

In general, taxable income includes income or gains derived from Nicaraguan sources, such as income derived from the sale and exportation of goods, amounts received for services rendered and income and gains derived from real estate located in Nicaragua. Allowable deductions generally include all expenses necessary to generate taxable income.

**Imputed Income.** Nonresident companies that earn certain types of income in Nicaragua are subject to an imputed income assessment equal to a specified percentage of their Nicaraguan gross income. The amount of the imputed income assessment is subject to tax at the normal corporate income tax rate of 30%. The following are the applicable percentages for calculating imputed income.

Type of Income	Percentage (%)
Dividends	35
Interest	75
Royalties from patents, copyrights, trademarks and other similar rights	70
Payments for movies, films, television and radio programs	30
Income derived from real estate	
With buildings	70
Without buildings	80
Transportation	
Air transportation	5
Maritime transportation	10
International communications	5
Insurance	
Life insurance	3
Fire insurance	8
Maritime insurance	10
Other type of insurance	2
Compensation for services	35
Musical and artistic public spectacles	50

**Inventories.** If inventories are a significant element in the determination of a company's taxable income, the company must value each item based on the acquisition cost or market price, whichever is lower. The law allows companies to use the weighted-average cost, first-in, first-out (FIFO) or last-in, first-out (LIFO) methods to determine the cost of merchandise sold. The tax administration may authorize other methods.

**Provisions.** In general, companies may deduct 1% of the amount of receivables as a provision for doubtful accounts. To deduct a percentage in excess of 1%, companies must satisfy the requirements set forth in Article 27 of the Regulations to the Fiscal Equity Law.

Banks may deduct increases in minimum reserves for debtors in accordance with the standards of the Superintendent of Banks.

**Tax Depreciation.** Regulations under the income tax law allow the use of the straight-line method to calculate depreciation. However, the tax authorities may authorize certain exporters to use accelerated depreciation methods. The following are the applicable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Industrial buildings	10
Commercial buildings	5
Residences located on agricultural farms	10
Fixed assets of agricultural farms	10
Buildings held for rental	3*
Freight or mass transportation equipment	20
Other transportation equipment	12.5
Industrial machinery and equipment installed permanently	10
Industrial machinery and equipment not installed permanently	15
Agricultural and agro-industrial equipment	20
Elevators and air conditioning equipment	10
Communication equipment	20
Furniture and office equipment	20
Computers (central processing unit, monitor and keyboard)	50
Media equipment (video cameras)	50
Other machinery and equipment	20

\* The rate is applied to the registered value of the buildings.

**Relief for Losses.** Companies may carry forward their net operating losses for three years to offset all types of income. Net operating losses may not be carried back.

**Groups of Companies.** Nicaraguan law does not allow the filing of consolidated income tax returns or provide any other tax relief to consolidated groups of companies.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax	15
Municipal taxes	
Monthly tax on gross income	1
Annual municipal registration tax; tax base equals one-third of the gross income for the last three months of the preceding tax year	2
Real estate tax; imposed on 80% of the appraised value of the property	1
Payroll taxes; paid by employers (average rate)	17

#### **E. Foreign-Exchange Controls**

The Nicaraguan currency is the Cordoba (C\$). As of 30 September 2007, the exchange rate of the cordoba against the U.S. dollar was C\$18.6719 = US\$1.

No restrictions are imposed on foreign-trade operations or on foreign currency transactions.

#### **F. Tax Treaties**

Nicaragua has not entered into any income tax treaties with other foreign countries.

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*At the time of writing, the National Assembly was discussing a bill containing amendments to the tax laws. It is not known whether the amendments will be enacted. Because of the possibility of changes to the tax law, readers should obtain updated information before engaging in transactions.*

### A. At a Glance

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	10
Withholding Tax (%) (a)	
Investment Income (b)	
Dividends	10 (c)
Interest	10 (d)
Rental Income	10
Royalties	10
Building, Construction and Related Activities	5
Contract for Supplies	5
Consulting, Management and Technical Services	10
Commissions	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) Applicable to residents and nonresidents.  
 (b) For nonresidents, these are final taxes. For resident companies, only the withholding tax on dividends is a final tax.  
 (c) Certain dividends are exempt (see Section B).  
 (d) Certain interest is exempt (see Section C).

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide profits. Nonresident companies are taxed on the profits of their operations in Nigeria only. However, if a nonresident company performs a contract for survey, deliveries, installation or construction, the entire contract price is taxable in Nigeria, regardless of whether a portion of the contract is performed outside Nigeria. Assessable profits from all sources accruing in the

accounting period are aggregated for tax purposes. Total profit on which tax is assessed is calculated by deducting capital allowances (tax depreciation) from the aggregate of assessable profits.

A company is resident in Nigeria if it is incorporated and registered in Nigeria. A foreign company that intends to carry on a trade or business in Nigeria is required by the Companies and Allied Matters Act to incorporate a Nigerian company.

### **Rates of Corporate Tax**

*Corporate Income Tax.* The corporate income tax rate is 30%. However, tax is assessed at a reduced rate of 20% for a Nigerian company's first five tax years if it is engaged in manufacturing or agricultural production or in the mining of solid materials, and if its turnover (gross sales) is under ₦1 million.

*Tax Holidays.* Limited liability companies registered in Nigeria may apply for pioneer status, which is granted in industries vital to Nigeria's economic development or beneficial to the public interest. A company with pioneer status is granted a tax holiday of up to three years, with a possible extension of two years and an additional two-year extension if the company is located in an economically disadvantaged area.

Approved enterprises operating within export free-trade zones are exempt from all federal, state and local government taxes, levies and rates. New export-oriented companies located outside the free-trade zone may qualify for a three-year tax holiday if they satisfy certain conditions.

New companies engaged in the mining of solid minerals also enjoy a tax holiday for their first three years of operations.

*Oil and Gas Companies.* Companies engaged in the marketing and distribution of gas for domestic and industrial use are subject to the Companies' Income Tax Act.

Beginning on the date they begin production, companies engaged in the marketing and distribution of gas for domestic and industrial use and companies engaged in industrial projects that use gas benefit from an initial five-year tax holiday, which is renewable for an additional two years if they are performing satisfactorily. After the tax holiday has expired, for expenditure on plant and machinery, the companies benefit from an annual allowance of 90% in the year of expenditure and 9% in the second year. In addition, they may claim a 15% investment allowance, which does not reduce the cost of the asset for the purposes of calculating the annual allowance.

During the tax holiday described above, dividends distributed on investments of foreign currency or plant and machinery representing at least 30% of the equity of the company are exempt from tax.

All expenditure necessarily incurred to separate gas from the reservoir (underground rock formation containing crude oil or gas), to convert it into usable product and to deliver gas to points of use is considered part of the capital investment for oil-field development, which may be charged against profits.

A gas-flaring penalty is imposed on oil companies for wasteful disposals of gases through burning in oil fields and refineries.

Companies engaged in gas exploration are subject to the Companies' Income Tax Act.

Petroleum- and gas-producing companies are subject to Petroleum Profit Tax at a rate of 85%. However, a concessionary rate of 65.75% applies if certain conditions are met.

*Minimum Tax.* Companies are required to pay minimum corporate tax if the minimum tax is greater than their actual tax liability. The minimum tax is computed by first determining the highest of the following:

- 0.5% of gross profit;
- 0.5% of net assets;
- 0.25% of paid-up capital; or
- 0.25% of turnover, up to ₦500,000.

The company then adds 0.125% of turnover exceeding ₦500,000 to this figure to determine the minimum tax.

The minimum tax does not apply to companies until the fifth year after the commencement of business. Companies engaged in an agricultural trade or business and companies with at least 25% imported equity capital are exempt from the minimum tax requirement.

If minimum tax is payable, capital allowances calculated for the year, together with capital allowances brought forward, are reduced by the taxable profit for the year.

*Withholding Tax.* The withholding tax rate on dividends and interest for residents and for recipients in nontreaty countries is generally 10%. However, certain dividends are exempt from tax (see *Dividends* below). Taxable interest income includes interest on all time deposits with banks and on savings passbook accounts of ₦50,000 and above. Certain types of interest income are exempt from tax (see Section C). Tax withheld from dividends and interest accruing to nonresident companies is regarded as a final tax. For resident companies, the withholding tax from dividends is also regarded as a final tax, but they must account for other investment income in their tax returns and claim credit for tax withheld. Both resident and nonresident companies must include in their tax returns earned income subject to withholding and claim the tax withheld as a credit.

**Capital Gains.** Capital gains tax is chargeable on the gains accruing from the disposal of all types of assets, including the following:

- Land and buildings;
- Options, debts and other property rights;
- Any currency other than Nigerian currency;
- Any form of property created by the person disposing of it or otherwise coming to be owned without being acquired; and
- Movable assets (motor vehicles).

For resident companies, disposals of assets located outside Nigeria are taxable regardless of whether gains accruing from such disposals are received in Nigeria. For nonresident companies, only gains accruing in Nigeria are taxable.

Taxable gain is the difference between the consideration accruing on the disposal of an asset and its original cost together with expenses incurred on its disposal.

Any loss incurred on a disposal may not be offset against the gains accruing from the disposal of another asset unless the two disposals result from a single transaction. Taxable gains are assessed in the year of disposal of an asset. The capital gains tax rate is 10%.

A company may claim an exemption if the proceeds from the disposal of an asset used in a trade or business are applied within a year before or after the disposal toward the acquisition of a similar asset to be used in the same trade or business.

**Dividends.** Dividends are generally subject to a final 10% withholding tax. However, dividends are exempt from tax if paid by a Nigerian company to a recipient that owns a 10% or greater equity participation of the company's share capital and if the equity participation was wholly paid for with cash or equipment imported into Nigeria between 1 January 1987 and 31 December 1992.

Dividends distributed from pioneer profit (see *Rates of Corporate Tax* above) or from after-tax petroleum profit are exempt from tax.

### **Administration**

*Filing and Tax Payment.* The Federal Board of Inland Revenue is responsible for administering and collecting companies' income tax, petroleum profits tax (see Section D) and capital gains tax imposed on companies.

The tax year is from 1 January to 31 December. Every company subject to tax is required to file its tax return with the Inland Revenue within six months after the end of its accounting year or within 18 months after its date of incorporation. A penalty of ₦2,500 is imposed for the first month of lateness and ₦500 for each subsequent month.

All companies must file self-assessment forms and pay their tax liability when they file their tax returns. Companies may apply to the Inland Revenue for permission to pay their tax liability in up to six installments. The first installment must accompany the self-assessment form. The remaining five installments are payable over the following five months. Companies that do not comply with the requirement to file self-assessment forms are assessed tax based on their tax returns filed with the Inland Revenue. These companies may be required to pay their tax liability within two months after the date of service of the assessment.

A 10% penalty and interest at the bank lending rate are imposed for late payment of assessed tax. The bank lending rate, which is set by the Central Bank of Nigeria, is currently 21%.

*Advance Tax on Dividends.* A company planning to distribute dividends must first pay tax on the taxable profits at the companies tax rate to ensure that the dividends are paid with after-tax profits. The tax on dividends is considered an advance tax payment. If dividends are distributed from profit that is not subject to tax, the tax paid on dividends is not regarded as an advance payment of tax, and it is not refundable.

**Foreign Tax Relief.** Foreign tax on the profits or capital gains of a Nigerian company may be credited against the company's income tax or capital gains tax on the same profit or gains. If a company receives a dividend from a foreign company in which it has at least 10% of the voting power, it may also obtain relief for the



underlying foreign tax on the profits out of which the dividend is paid. Foreign tax relief may not exceed the Nigerian tax levied on the profit or gains.

### C. Determination of Trading Profit

**General.** Taxable income is based on financial statements prepared on commercial principles. Trading profit is adjusted for deductions not allowed for tax purposes and for profits or gains not subject to tax.

Investment income earned abroad is tax-exempt if it is brought into Nigeria through the Central Bank of Nigeria or through any bank or other corporate body appointed by the Minister of Finance as an authorized dealer.

Interest received by banks on loans with a moratorium of at least 18 months is exempt from tax if the loans are granted to agricultural trades or businesses, to companies or individuals engaged in the manufacturing of plant and machinery in Nigeria or for working capital for certain cottage industries established under the family economic development program.

Interest on bank loans granted for the manufacturing of goods for export and interest on foreign loans are tax-exempt in accordance with the following percentages.

Repayment Period Including Moratorium	Grace Period	Tax Exemption Allowed (%)
More than 7 years	Not less than 2 years	100
5 to 7 years	Not less than 18 months	70
2 to 4 years	Not less than 12 months	40
Less than 2 years	None	0

Interest earned by a nonresident company on a deposit account consisting entirely of foreign-currency transfers is exempt from tax. In addition, interest on foreign-currency accounts maintained or operated in Nigeria is exempt from tax.

Expenses must be reasonable and incurred wholly, exclusively, necessarily and reasonably for the purpose of the trade or business.

Deductions are not allowed for the following: losses reimbursable under an insurance contract or a contract of indemnity; for donations made to public bodies and institutions not approved by the government; for subscriptions to social organizations; and for contributions to a pension and provident fund scheme that has not been approved by the Joint Tax Board.

Maximum limitations apply to the deductibility of the following: entertainment expenses; donations to approved bodies and institutions; management fees; and contributions to a pension and provident fund scheme that has been approved by the Joint Tax Board.

**Inventory.** The tax law does not prescribe any basis for valuation of inventory, provided a method is used consistently from year to year. However, first-in, first-out (FIFO) is one of the methods recommended by the Nigerian Accounting Standards Board, and last-in, first-out (LIFO) is discouraged.

### Tax Depreciation (Capital Allowances)

*Initial and Annual Allowances.* Annual allowances are granted under the straight-line method. Initial allowances are deducted from

the asset's cost before the annual allowance rate is applied on the balance. The following are rates of initial and annual allowances.

<b>Qualifying Expenditure</b>	<b>Initial Allowance (%)</b>	<b>Annual Allowance (%)</b>
Industrial buildings	15	10
Other buildings	15	10
Mining	95	None
Agricultural plant and machinery (excluding furniture and fittings)	95	None
Replacement of obsolete industrial plant and machinery	95	None
Plant and machinery used by companies engaged in gas utilization	90	None
Other plant and machinery (excluding furniture and fittings)	50	25
Motor vehicles for public transportation (excluding mass transit buses)	95	None
Mass transit buses	100	None
Other motor vehicles	50	25
Ranching and plantation (preproduction)	30	50
Research and development	95	None
Housing estate	50	25
Furniture and fittings	25	20

*Investment Allowances.* An investment allowance at a rate of 10% is granted for expenditure incurred on plant and equipment. If the expenditure is for replacement of obsolete industrial plant and equipment, the rate is increased to 15%. The investment allowance is not deducted from the cost of assets. It is granted in addition to the initial allowance. An investment allowance may be carried forward if it is not completely used to offset income in the year of the acquisition of the asset.

Companies established at least 20 kilometers (12.4 miles) from certain types of infrastructural facilities may claim rural investment allowances instead of investment allowances for expenditures on such facilities. The types of facilities and the applicable percentages of rural investment allowances are the following: electricity, 50%; water, 30%; and tarred road, 15%. Unused rural investment allowances may not be carried forward.

Initial and annual allowances are recaptured on the sale of an asset if the sales price exceeds the written-down tax value. The amount recaptured may not exceed the initial and capital allowances granted. Amounts recaptured are taxed as ordinary income at the regular corporate tax rates.

**Investment Tax Relief.** Investment tax relief is similar to the rural investment allowance. It is granted for expenditures on certain infrastructural facilities by companies established at least 20 kilometers (12.4 miles) from such facilities. The following are the types of facilities and the applicable percentages of the relief:

electricity, 50%; water, 30%; and tarred road, 15%. The investment tax relief may be claimed for three years. A company that has enjoyed or is enjoying pioneer status (see Section B) may not claim the relief. A company may claim both the investment tax relief and the rural investment allowance [see *Tax Depreciation (Capital Allowances)* above] at the same time.

Companies engaged in research and development activities may claim a tax credit of 20% of their qualifying capital expenditure.

A 15% tax credit is granted for purchases of locally manufactured plant and machinery and equipment for the use of the purchaser.

Companies wholly engaged in the manufacturing of tools, spare parts and similar items are entitled to a tax credit of 25% with respect to their qualifying capital expenditure. A company may claim both the tax credit and the rural investment allowance [see *Tax Depreciation (Capital Allowances)* above] at the same time.

**Relief for Losses.** Trade and business losses may be carried forward to offset profits of the same trade or business for an unlimited number of years. Losses may not be carried back.

**Groups of Companies.** Each company must file a separate tax return. There are no provisions for filing consolidated returns or offsetting losses against profits within a group of companies.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, levied on specified goods and services, including goods manufactured or assembled in Nigeria, imported goods, certain bank services and certain services performed by professionals	5
Education tax, on assessable income; the tax is deductible for purposes of the petroleum profits tax	2
Pension contributions, on monthly gross salary (for pension purposes, gross salary consists of basic pay, and housing and transport allowances); paid by	
Employer	7.5
Employee	7.5
(Expatriates covered by a plan in their home country may qualify for exclusion.)	
Information technology levy; imposed on before-tax profits of specified companies and enterprises with annual turnover of ₦100 million or more	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Before investing in Nigeria, foreigners must register with the Nigeria Investment Promotion Commission and obtain a Certificate of Capital Importation from authorized foreign-exchange dealers through whom foreign currency is imported. This certificate, which serves as documentary evidence

of the importation of the currency, guarantees the unconditional transferability of dividends and interest and the repatriation of capital through authorized dealers.

Companies are free to determine the amount of dividends distributed. Borrowing funds to remit dividends is not allowed. The application to remit dividends must be submitted with the Certificate of Capital Importation and a tax clearance certificate, which establishes that tax was paid or that no tax is due with respect to the remitted dividends. If the appropriate amount of tax is withheld from dividends and interest paid to nonresidents, no additional tax clearance is required.

Remittances of royalties and fees require the approval of the National Office for Technology Acquisition and Promotion. Permission is granted if the royalties and fees are within certain prescribed limits.

Importation and exportation of the naira, the Nigerian currency, are prohibited.

Exporters of non-oil products must open a local bank account marked "Export Proceeds" and must credit their foreign-currency export earnings to this account.

**Antiavoidance Provisions.** If the Chairman of the Federal Board of Inland Revenue sends a written request to a bank for information pertaining to its customers, the bank must comply with the request. A government ministry, government agency or bank entering into a transaction with any company is required to demand a tax clearance certificate from such company. The certificate must provide evidence of tax payment or tax exemption during the preceding three years.

**Transfer Pricing.** Under the tax law, if the tax authority determines that transactions between two related companies are artificial and fictitious and are carried out to reduce the tax liability of either of the companies, the tax authority may direct appropriate adjustments to ensure that the proper amount of tax is paid.

**Debt-to-Equity Rules.** No tax-related thin-capitalization rules apply in Nigeria.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Belgium	7.5	7.5	7.5
Canada	7.5	7.5	7.5
Czech Republic	7.5	7.5	7.5
France	7.5	7.5	7.5
Netherlands	7.5	7.5	7.5
Pakistan	7.5	7.5	7.5
Romania	7.5	7.5	7.5
United Kingdom	7.5	7.5	7.5
Nontreaty countries	10	10	10

Nigeria has signed double tax treaties with Bulgaria, China, the Philippines, Poland and South Africa, but these treaties have not yet been ratified.

Nigeria has begun tax treaty negotiations with Algeria, Mauritius, Tunisia and Yugoslavia.

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## A. At a Glance

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35 (a)
Branch Income Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends	30 (a)(b)
Interest	30 (a)(b)(c)
Royalties from Patents, Know-how, etc.	30 (a)(b)
Branch Profits Tax	30 (a)(d)
Net Operating Losses (Years)	
Carryback	2
Carryforward	20 (e)

- Income tax on income sourced within the Northern Marianas that exceeds gross revenue tax on the same income is subject to a rebate. For details, see Section B.
- Imposed on payments to nonresidents. See Section E.
- Bank deposit interest not effectively connected with a trade or business in the Northern Marianas and interest on certain portfolio debt obligations are exempt from withholding tax.
- This is the branch profits tax, imposed on the earnings of a foreign corporation attributable to its branch, reduced by earnings reinvested in the branch and increased by reinvested earnings withdrawn.
- No deduction is available for net operating losses arising before 1 January 1985.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporations are subject to a gross revenue tax. In addition, the Commonwealth of the Northern Mariana Islands (CNMI) has adopted the U.S. Internal Revenue Code as

its income tax law. For a description of the income taxation of resident corporations doing business in CNMI, refer to the chapter in this book on the United States and substitute "CNMI" for each reference to the "United States."

To avoid double taxation, a credit against income tax is given for gross revenue tax paid or accrued on income earned within the Northern Marianas. If income tax on Northern Marianas income exceeds the gross revenue tax, the company is entitled to a rebate of specified percentages of the excess. The following are the rebate percentages: 90% of the excess up to \$20,000; 70% of the next \$80,000; and 50% of the excess over \$100,000.

Income earned by residents from foreign sources is subject to the full amount of tax under the Internal Revenue Code (I.R.C.). A special rule prevents U.S. residents from taking advantage of the rebate by changing their residence to report gains on the sale of U.S. property or stock in U.S. companies on their Northern Marianas tax return.

**Gross Revenue Tax.** A gross revenue tax is imposed on the gross income of businesses from their activities and investments in the CNMI. The gross revenue tax rates are shown in the following table.

Gross Revenue		Rate on
Exceeding	Not Exceeding	Total Gross Income
\$	\$	%
0	5,000	0
5,000	50,000	1.5
50,000	100,000	2
100,000	250,000	2.5
250,000	500,000	3
500,000	750,000	4
750,000	—	5

These rates apply to total gross income and are not progressive.

**Tax Incentives.** The CNMI, through the Commonwealth Development Authority, is authorized by law to grant tax rebates to qualified investors. The Commonwealth Development Authority grants Qualifying Certificates (QCs) for tax incentives to businesses engaged in activities that are deemed to be beneficial to the development of the CNMI economy. The incentives are aimed primarily at franchise restaurants, water parks, aquariums, cultural centers, theme parks, resort hotels, golf courses, convention centers, dinner theaters, special events, CNMI-based airlines, manufacturing of high-technology products and Internet-related businesses. In general, QCs can provide rebates of up to 100% of income tax paid for up to 25 years.

**Basis of Qualified Fresh-Start Assets.** Under the Northern Marianas Territorial Income Tax, effective 1 January 1985, income from pre-1985 appreciation of Northern Marianas property is not subject to income tax. For the purposes of determining gain and allowances for depreciation and amortization, the basis of the Northern Marianas real and personal property is the greater of the basis determined under the I.R.C. or the fair-market value as of 1 January 1985. Fair-market value can be established either by independent appraisal or by discounting the ultimate sales price back to 1 January 1985, using the discount factors specified by

regulation. Currently, rates published by the U.S. Internal Revenue Service are used.

**Administration.** Income taxes are paid to the government of the Northern Marianas, which administers its tax system. In general, the administration of the Northern Marianas tax is the same as in the United States, but estimated taxes are due on the last day of the month following the end of each quarter of the tax year. The income tax rebate is not available to reduce estimated tax payments.

**Foreign Tax Relief.** Foreign tax credits are available in the Northern Marianas to reduce income tax in the same manner as foreign tax credits in the United States. The credits do not reduce gross revenue tax, which is imposed on CNMI-source income only.

### C. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Hotel occupancy tax	10%
Excise taxes on all property except school and library books and machinery and raw materials used in manufacturing	Various
Liquid fuel taxes	
Gasoline, diesel and other liquid fuels (refunded if used by commercial vessels outside CNMI)	15 cents a gallon
Aviation fuel (reduced depending on flight schedule)	3%
Social security contributions (including 1.45% Medicare Tax; U.S. system); imposed on Wages up to \$102,000 (for 2008); paid by	
Employer	7.65%
Employee	7.65%
Wages in excess of \$102,000 (for 2008); paid by	
Employer	1.45%
Employee	1.45%
Miscellaneous license fees	Various

### D. Miscellaneous Matters

**Foreign-Exchange Controls.** CNMI does not impose foreign-exchange controls, but large currency transfers must be reported to the U.S. Treasury Department.

**Transfer Pricing.** The U.S. transfer-pricing rules apply in CNMI.

**Debt-to-Equity Rules.** The U.S. thin-capitalization rules apply in CNMI.

### E. Treaties and Withholding Taxes

CNMI does not participate in the U.S. income tax treaties and has not entered into any treaties with other countries. The withholding tax rate for dividend, interest and royalty payments to nonresidents is 30%, but the rebate discussed in Section B is available if a recipient files a CNMI income tax return. In general, no withholding tax is imposed on payments between CNMI and the United States or Guam, unless the recipient exceeds certain foreign ownership and income limitations.

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*Unless otherwise indicated, the rates and thresholds stated in the chapter apply to 2007 income. Changes with respect to the taxation of 2008 income may be introduced with retroactive effect until 31 December 2008.*

**A. At a Glance**

Corporate Income Tax Rate (%)	28
Capital Gains Tax Rate (%)	28
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	25 (a)
Interest	0
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0 (b)
Carryforward	Unlimited (c)

- (a) This tax applies to dividends paid to nonresident shareholders. Dividends paid to corporate shareholders resident in member states of the European Union (EU) or the European Economic Area (EEA) agreement are exempt from withholding tax.
- (b) See Section C.
- (c) Effective from 2006, losses incurred in the 1996 income year and future income years may be carried forward indefinitely. The 10-year carryforward rule under prior law applied only to losses incurred before 1996.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are subject to corporate income tax on worldwide income. Nonresident companies are subject to corporate income tax on income attributable to Norwegian business operations.

A company is resident in Norway if it is incorporated (registered) in Norway or if its central management and control are effectively exercised in Norway.

**Rates of Corporate Tax.** For 2007, the corporate tax rate is 28%.

In addition to the general income tax of 28%, a special petroleum tax of 50% applies to income from oil and gas production and from pipeline transportation.

Qualifying shipping companies may elect a special shipping tax regime instead of the ordinary tax regime. It is proposed that the existing deferred tax regime be replaced by a shipping tax exemption regime, effective from 2008. Under the proposed regime, profits derived from shipping activities will be exempt from tax. Companies electing the shipping tax regime must pay an insignificant tonnage excise tax. Financial income is taxed at a rate of 28%.

**Capital Gains.** In general, capital gains derived from the disposal of business assets and shares are subject to normal corporate taxes. However, for corporate shareholders, capital gains on shares in Norwegian or foreign companies may be exempt from tax. This exemption applies regardless of the ownership participation or holding period if the shares are in a company resident in a member state of the EU or the EEA. However, if the EU/EEA country is regarded as a low-tax jurisdiction, a condition for the exemption is that the EU/EEA resident company be actually established and engaged in real economic activities within its home country. The exemption does not apply to capital gains on the alienation of shares in the following companies: companies resident outside the EU/EEA in low-tax jurisdictions, as defined in the Norwegian tax law regarding controlled foreign companies (CFCs; see Section E); and companies resident outside the EU/EEA if the corporate shareholder has not held at least 10% of the capital and the votes in the company for more than two years preceding the alienation. The right of companies to deduct capital losses on shares is eliminated to the same extent that a gain would be exempt from tax.

**Administration.** The annual tax return is due 31 March for accounting years ending in the preceding calendar year. The deadline is extended to 31 May if the tax return is submitted electronically. Assessments are made in the fourth quarter of the year in which the return is submitted. Tax is paid in three installments.

The first two are paid on 15 February and 15 April, respectively, based on  $\frac{1}{2}$  of the tax due from the previous assessment. The last installment represents the difference between the tax paid and the tax due, and is payable three weeks after the issuance of the assessment (normally October). Interest is charged on residual tax.

**Dividends.** An exemption regime with respect to dividends on shares is available to companies. The tax exemption applies regardless of the ownership participation or holding period if the payer of the dividends is a resident in an EU/EEA member state. However, if the EU/EEA country is regarded as a low-tax jurisdiction, a condition for the exemption is that the EU/EEA resident company be actually established and engaged in real economic activities within its home country. The exemption does not apply to dividends paid by the following companies: companies resident outside the EU/EEA in low-tax jurisdictions as defined in the Norwegian tax law regarding CFCs (see Section E); and other companies resident outside the EU/EEA if the recipient of the dividends has not held at least 10% of the capital and the votes of the payer for a period of more than two years that includes the distribution date.

Dividends paid to resident individuals are subject to a 28% tax in the hands of the recipients. This tax is not withheld at source. Resident individuals must include the dividends in taxable income on their tax returns.

Dividends paid to nonresident shareholders are subject to a 25% withholding tax. The withholding tax rate may be reduced by tax treaties. Dividends distributed by Norwegian companies to corporate shareholders resident in EU/EEA member states are exempt from withholding tax. This exemption applies regardless of the ownership participation or holding period. However, a condition for the exemption is that the EU/EEA resident company be actually established and engaged in real economic activities within its home country.

As a result of differences between financial accounting rules and tax rules, companies may distribute dividends from income that has not yet been taxed. To ensure that the distributing company pays tax on earnings that are distributed, taxable correction income is computed on distributions of profits that have not yet been taxed. The correction income is included in other income subject to the regular corporate tax rate. Consequently, deferred tax is payable when dividends are distributed.

**Foreign Tax Relief.** A tax credit is allowed for foreign tax paid by Norwegian companies, but it is limited to the proportion of the Norwegian tax that is levied on foreign-source income.

For dividend income taxable in Norway, Norwegian companies holding at least 10% of the share capital and the voting rights of a foreign company for a period of more than two years that includes the distribution date may also claim a tax credit for the underlying foreign corporate tax paid by the foreign company, provided the Norwegian company includes an amount equal to the tax credit in taxable income. In addition, the credit is also available for tax paid by a second-tier subsidiary, provided that the Norwegian parent

indirectly holds at least 25% of the second-tier subsidiary and that the second-tier subsidiary is a resident of the same country as the first-tier subsidiary. The regime also applies to dividends paid out of profits that have been retained by the first- or second-tier subsidiary for up to four years after the year the profits were earned. The tax credit applies only to tax paid to the country where the first- and second-tier subsidiaries are resident.

### C. Determination of Taxable Income

**General.** Although taxable income is based on book income shown in the annual financial statements (which must be prepared in accordance with generally accepted accounting principles), the timing of income taxation is based on the realization principle. Consequently, the basic rules are that an income is taxable in the year in which the recipient has obtained an unconditional right to receive the income, and an expense is deductible in the year in which the payer has incurred an unconditional obligation to pay the expense. In general, all expenses, except gifts and entertainment expenses, are deductible.

**Inventory.** Inventory is valued at cost, which must be determined on a first-in, first-out (FIFO) basis.

**Depreciation.** Depreciation on fixed assets must be calculated using the declining-balance method at any rate up to a given maximum. Fixed assets (with a cost of more than NOK 15,000 and with a useful life of at least 3 years) are allocated to one of the following eight different groups.

Group	Maximum Depreciation Rates (%)
A Office equipment and similar items	30
B Acquired goodwill	20
C Trailers, trucks, buses, taxis and vehicles for the transportation of disabled persons	20
D Cars, tractors, other movable machines, other machines, equipment, instruments, furniture, fixtures and similar items	20
E Ships, vessels, drilling rigs and similar items	14
F Aircraft and helicopters	12
G Installations for transmission and distribution of electric power and electronic equipment in power stations	5
H Industrial buildings, hotels, rooming houses, restaurants and similar buildings	4 or 8
I Office buildings	2

Assets in groups A, B, C and D are depreciated as whole units, while assets in groups E, F, G, H and I are depreciated individually.

If fixed assets in groups A, B, C and D are sold, the proceeds reduce the balance of the group of assets and consequently the basis for depreciation. If a negative balance results within groups A, C or D, part of the negative balance must be included in income. In general, the amount included in income is determined by multiplying the negative balance by the depreciation rate for the group.

However, if the negative balance is less than NOK 15,000, the entire negative balance must be included in taxable income.

A negative balance in one of the other groups (B, E, F, G, H and I) must be included in a gains and losses account. Twenty percent of a positive balance in this account must be included annually in taxable income.

**Relief for Losses.** A company holding more than 90% of the shares in a subsidiary may form a group for tax purposes. Intragroup contributions to set off profits in one company against losses in another may be made if included in the statutory accounts.

Alternatively, losses may be carried forward indefinitely. Losses can only be carried back when a business is terminated and then only against profits of the preceding two years.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on any supply of goods and services, other than an exempt supply, in Norway	
General rate	25
Articles of food	14
Passenger transportation	8
Social security contributions, on all taxable salaries, wages and allowances, and on certain fringe benefits; paid by	
Employer (general rates; lower in some municipalities and for employees age 62 and over)	14.1
Employee (expatriates liable unless exempt under a social security convention)	7.8
Professional income	
(proposed rate, effective from 2008)	11
Pensioners and persons under 17 years old	3

## E. Miscellaneous Matters

**Antiavoidance Legislation.** Legislation permits the revenue authorities to impute arm's length prices if transactions between related parties are not considered at arm's length. The legislation also applies to thin-capitalization issues.

**Foreign-Exchange Controls.** Norway does not impose foreign-exchange controls. However, foreign-exchange transactions must be carried out by approved foreign-exchange banks.

**Debt-to-Equity Rules.** Norway does not have statutory thin-capitalization rules. However, it does have a set of best practice general rules. As a rule of thumb, companies should maintain a minimum 20% equity ratio (this may be reduced to 15% in certain specific circumstances). Effective from 1 January 2007, thin-capitalization rules within the petroleum tax sector have been replaced by an allocation rule that regulates the deductibility of interest expenses for income subject to petroleum tax.

**Controlled Foreign Companies.** Norwegian shareholders in controlled foreign companies (CFCs) resident in low-tax jurisdictions are subject to tax on their allocable shares of the profits of the CFCs, regardless of whether the profits are distributed as dividends. A CFC is a company of which 50% or more of its shares is owned directly or indirectly by Norwegian residents. A low-tax jurisdiction is a jurisdiction with a corporate tax rate that is less than two-thirds of the Norwegian tax rate (that is, less than 18.66%). The CFC rules do not apply to the following CFCs: a CFC resident in a country with which Norway has entered into a tax treaty if the activities of the CFC are not of a passive nature; and a CFC resident in an EU/EEA member country if such CFC is actually established and engaged in real economic activities within its home country.

The losses of a CFC may not offset the non-CFC income of an owner of the CFC, but they may be carried forward to offset future profits of the CFC.

## F. Treaty Withholding Tax Rates

Interest and royalties paid to foreign recipients are not subject to withholding tax under Norwegian domestic law. Consequently, the following table provides treaty withholding tax rates for dividends only.

	Dividends	
	Normal Rate	Reduced Rate
	%	%
Albania	15	5 (c)
Argentina	15	10 (c)
Australia	15	5 (d)
Austria (a)	15	5 (c)
Azerbaijan	15	10 (k)
Bangladesh	15	10 (d)
Barbados	15	5 (d)
Belgium (a)	15	5 (c)
Benin	20	–
Brazil	25	–
Bulgaria	15	–
Canada	15	5 (d)
Chile	15	5 (c)
China	15	–
Côte d'Ivoire	15	–
Cyprus (a)(b)	5	0 (g)
Czechoslovakia (a)(e)	15	5 (c)
Czech Republic (a)	15	0 (d)
Denmark (a)		
(Nordic Treaty)	15	0 (d)
Egypt (b)	15	–
Estonia (a)	15	5 (c)
Faeroe Islands		
(Nordic Treaty)	15	0 (d)
Finland (a)		
(Nordic Treaty)	15	0 (d)
France (a)	15	0 (i)
Gambia	15	5 (c)
Germany (a)(b)	15	0 (c)
Greece (a)	20	–
Greenland	15	5 (d)
Hungary (a)	10	–

	Dividends	
	Normal Rate %	Reduced Rate %
Iceland (a) (Nordic Treaty)	15	0 (d)
India (b)	25	15 (c)
Indonesia	15	—
Ireland (a)	15	5 (d)
Israel	15	5 (g)
Italy (a)(b)	15	—
Jamaica	15	—
Japan	15	5 (c)
Kazakhstan	15	5 (d)
Kenya	25	15 (c)
Korea	15	—
Latvia (a)	15	5 (c)
Liechtenstein (a)	25	0 (l)
Lithuania (a)	15	5 (c)
Luxembourg (a)	15	5 (c)
Malawi	5	0 (g)
Malaysia (b)	0	—
Malta (a)(b)	15	—
Mexico	15	0 (c)
Morocco	15	—
Nepal	15	5 (h)
Netherlands (a)	15	0 (c)
Netherlands Antilles	15	5 (c)
New Zealand	15	—
Pakistan	15	—
Philippines	25	15 (d)
Poland (a)(b)	15	5 (c)
Portugal (a)(b)	15	10 (c)
Romania	10	—
Russian Federation	10	—
Senegal	16	—
Sierra Leone	5	0 (g)
Singapore	15	5 (c)
South Africa	15	5 (c)
Spain (a)	15	10 (c)
Sri Lanka	15	—
Sweden (a) (Nordic Treaty)	15	0 (d)
Switzerland	15	0 (m)
Tanzania	20	—
Thailand	25	20 (c)
Trinidad and Tobago	20	10 (c)
Tunisia	20	—
Turkey (b)	25	20 (c)
Uganda	15	10 (c)
Ukraine	15	5 (c)
United Kingdom (a)	15	5 (d)
United States (b)	15	—
Venezuela	10	5 (d)
Vietnam	15	5 (j)
Yugoslavia (f)	15	—
Zambia	15	—
Zimbabwe	20	15 (c)
Nontreaty countries	25	—

- (a) Dividends paid to corporate residents of EU/EEA member states are exempt from withholding tax if the EU/EEA resident company is actually established and engaged in real economic activities within its home country.
- (b) A revision of this treaty is currently being negotiated.
- (c) The treaty withholding rate is increased if the recipient is not a company owning at least 25% of the distributing company.
- (d) The treaty withholding rate is increased if the recipient is not a company owning at least 10% of the distributing company.
- (e) Norway honors the Czechoslovakia treaty with respect to the Slovak Republic. Norway has entered into a tax treaty with the Czech Republic. The withholding tax rates under the Czech Republic treaty are shown in the above table.
- (f) Norway honors the suspended Yugoslavia treaty with respect to Croatia and Slovenia. Norway is negotiating a tax treaty with Slovenia. Norway has also honored the suspended Yugoslavia treaty with respect to the Union of Serbia and Montenegro based on an exchange of notes. However, the Union of Serbia and Montenegro terminated on 3 June 2006. The treaty now applies only to Serbia because the Norwegian Ministry of Foreign Affairs considers Serbia to be the successor state. No tax treaty is effective between Norway and Montenegro. However, it will be determined whether the suspended Yugoslavian treaty will apply with respect to Montenegro. Other cases are dealt with individually by the authorities.
- (g) The treaty withholding rate is increased if the recipient is not a company holding at least 50% of the voting power of the distributing corporation.
- (h) The 5% rate applies if the recipient is a company owning at least 25% of the distributing company. The rate is increased to 10% if the recipient is a company owning at least 10%, but less than 25%, of the distributing company. For other dividends, the rate is 15%.
- (i) The treaty withholding rate is increased to 15% if the recipient is not a corporation owning at least 25% of the distributing company. However, the rate is 5% if the recipient is a French corporation owning at least 10%, but less than 25%, of the distributing company.
- (j) The 5% rate applies if the recipient of the dividends owns at least 70% of the capital of the Norwegian payer. The rate is increased to 10% if the recipient owns at least 25%, but less than 70%, of the Norwegian payer. For other dividends, the rate is 15%.
- (k) The treaty withholding rate is increased to 15% if the recipient is not a company that satisfies both of the following conditions: it owns at least 30% of the capital of the distributing company; and it has invested more than US\$100,000 in the payer.
- (l) Norway has not entered into a double tax treaty with Liechtenstein. However, because Liechtenstein is a member of the EEA, under domestic Norwegian tax law, the reduced rate applies to dividends paid to companies. In other cases the rate is 25%.
- (m) The 0% rate applies if the recipient is a company that owns at least 20% of the distributing company.

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*A new tax law is expected to be issued in 2008. Because of the expected issuance of this law, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	10 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (c)

(a) See Section B.

(b) This tax is imposed on the following earnings of foreign companies without a permanent establishment in Oman: royalties; rent for equipment; management fees; fees for transfers of technical know-how; and research and development fees. Companies or permanent establishments in Oman that pay these items must deduct tax at source and remit it to the Secretary General of Taxation.

(c) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies, including partnerships and joint ventures, carrying on business in Oman are subject to tax on Omani-source income. Under certain circumstances, income arising outside Oman is deemed to be Omani-source income.

**Rates of Corporate Income Tax.** Companies registered in Oman, regardless of the extent of foreign participation, and permanent establishments of companies incorporated in the other member countries of the Gulf Cooperation Council (GCC; Bahrain, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates are the other members of the GCC) are subject to tax at a rate of 0% on their first RO 30,000 of income, and at a rate of 12% on their income in excess of RO 30,000.

Branches of foreign companies, other than companies incorporated in the member states of the GCC, are subject to tax at the rates listed in the following table.

Taxable Income		Rate (%)
Exceeding RO	Not Exceeding RO	
0	5,000	0
5,000	18,000	5
18,000	35,000	10
35,000	55,000	15

Taxable Income		Rate (%)
Exceeding RO	Not Exceeding RO	
55,000	75,000	20
75,000	100,000	25
100,000	—	30

The tax rates for branches of foreign companies are not progressive. Consequently, total taxable income is taxed at the appropriate rate from the above table. For example, the tax on RO 80,000 is RO 20,000 (25% of 80,000). However, marginal relief applies if taxable income slightly exceeds the maximum amount in the previous tax band. In such circumstances, the tax is calculated by adding the excess to the amount payable on the maximum amount in the previous tax band.

Oil exploration and production companies are taxed under special rules covered by concession agreements.

Foreign shipping and aviation companies are exempt from tax in Oman, if the Omani shipping and aviation companies enjoy similar reciprocal treatment in the respective foreign countries.

Income earned by joint investment accounts (mutual funds) established under the Omani regulations or those established outside Oman to deal in Omani financial instruments listed on the Muscat Securities Market (MSM) is exempt from tax. Colleges, universities and other private higher education institutions, private schools, kindergarten and training institutes and medical care companies that establish private hospitals are exempt from tax, subject to certain regulations.

Tax holidays are available to companies engaged in industrial activities, mining, exporting, tourism, agricultural farm production, farm processing, animal husbandry, processing and manufacturing of animal products, fishing, fish processing and certain services such as public utility services. The performance of management contracts and construction contracts in tourism and public utility projects and project companies covered by the Sector Law do not qualify for tax holidays. Tax holidays are granted for five years from the beginning of production or business operations. The Council of Financial Affairs and Energy Resources may grant an extension of the tax holiday for up to five years, subject to the satisfaction of certain conditions.

**Capital Gains.** No special rules apply to capital gains. Capital gains are taxed as part of regular income at the rates set out in *Rates of Corporate Income Tax* above.

Gains derived from sales of investments and securities listed on the MSM are exempt from tax.

**Administration.** The tax year is the calendar year. A company is permitted to have a different accounting year. Provisional tax returns must be filed within three months of the end of the accounting year and final returns within six months. There are no advance payment procedures, and tax due must be paid with the provisional return. A fine of 1% per month is levied on late payments. Various penalties may also be imposed.

**Dividends.** Dividends received by Omani companies from other Omani companies are not taxed.

**Foreign Tax Relief.** Relief for foreign taxes paid may be allowed on a case-by-case basis by the authorities.

### C. Determination of Trading Income

**General.** Tax is levied on income that has been realized or has arisen in Oman or which the Secretary General of Taxation deems to have been realized or to have arisen in Oman. Financial accounts must be presented on the accrual basis of accounting.

Actual expenses incurred may be deducted. However, special rules exist for allowances, such as depreciation, bad debts, donations, director's remuneration, rent, head-office overhead allocated to branches and sponsorship fees. Any exchange difference relating to head-office or related-party balances is normally disregarded.

If certain income is exempt from tax, the related expenses are not deductible for tax purposes.

**Inventories.** The tax law does not stipulate a required method of accounting for inventories. In general, they are valued at the lower of cost or net realizable value, with cost determined using the weighted-average or first-in, first-out (FIFO) method. Any provisions to bring down the value to net realizable value, however, are not allowed for tax purposes.

**Tax Depreciation.** The following fixed annual depreciation rates are set by the tax law.

Assets	Rate (%)
Permanent buildings	4
Prefabricated buildings	15
Heavy equipment (usually earth-moving equipment)	33 $\frac{1}{3}$
Motor vehicles	33 $\frac{1}{3}$
Furniture	33 $\frac{1}{3}$
Other equipment and tools	15
Airplanes and ships	15
Scientific research equipment	100
Hospital buildings and educational establishments	100
Bridges, platforms, pipelines, roads and railways	10

For industrial buildings, the rate is doubled. Accelerated rates of up to 150% of the above rates are also permitted for equipment that is used continuously for three shifts a day. The rate for intangible assets is determined by the Secretary General of Taxation.

**Relief for Losses.** Losses may be carried forward for five years.

Net losses incurred by companies during the initial tax holiday period of five years, as described in Section B, may be carried forward indefinitely to offset future taxable income. No carry-back is permitted.

**Groups of Companies.** No measures exist for filing consolidated returns or for relieving losses within a group.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Social security contributions, on basic salary of Omani employees	
Pension fund; paid by	
Employer	9.5%
Employee	6.5%
Government	2%
Occupational injuries and diseases; payable by employer	1%
Vocational training levy for each non-Omani employee; paid biennially by employer	RO 200

## **E. Miscellaneous Matters**

**Antiavoidance Legislation.** Two antiavoidance provisions are contained in the Income Tax Law. Tax authorities are empowered to nullify or alter the tax consequences of any transaction that they have reasonable cause to believe was entered into to avoid or reduce a tax liability. This does not, however, apply to the transfer of a business by an individual or group of individuals to a company established for this purpose.

If a company carries out a transaction with a related party that was planned to reduce the company's taxable income, the income arising from the transaction is deemed to be the income that would have arisen had the parties been dealing at arm's length.

**Others.** Oman does not have any rules relating to foreign-exchange controls, debt-to-equity ratios or controlled foreign companies.

## **F. Tax Treaties**

Oman has entered into double tax treaties with Algeria, Canada, China, France, India, Italy, Korea, Lebanon, Mauritius, Pakistan, Seychelles, Singapore, South Africa, Sudan, Syria, Thailand, Tunisia, the United Kingdom and Yemen. Oman has signed double tax treaties with Belarus, Egypt, Iran, Morocco, Moldova, the Russian Federation and Turkey, but these treaties are not yet in force. Oman has signed double tax treaties with Brunei Darussalam, Germany and Kazakhstan, which have not yet been ratified.

Under Omani domestic law, withholding tax is not imposed on dividends or interest. Under the France, Mauritius and U.K. treaties, no withholding tax is imposed on royalties paid to companies resident in those countries, subject to the satisfaction of certain conditions. The 10% withholding tax on royalties under Omani domestic law applies to royalties paid to companies resident in the other treaty countries.

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**A. At a Glance**

Corporate Income Tax Rate (%)	35
Capital Gains Tax Rate (%)	35 (a)
Branch Tax Rate (%)	35
Withholding Tax (%) (b)	
Dividends	7.5/10 (c)
Interest	10 (d)
Royalties from Patents, Know-how, etc.	15/30 (e)
Fees for Technical Services	6/15 (f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	6

- (a) Only 75% of the gain is taxable in certain circumstances (see Section B).
- (b) See Section B for a listing of additional withholding taxes.
- (c) The 10% rate is the general rate of tax on dividends. The 7.5% rate applies to the following dividends: dividends paid by companies engaged in power generation or by purchasers of power projects privatized by the Water and Power Development Authority; and dividends paid to nonresident companies by companies engaged exclusively in mining operations, other than petroleum. The withholding tax is imposed on the gross amount of the dividend. It is considered to be an advance payment of tax by corporate taxpayers and may be credited against the final tax liability.
- (d) The withholding taxes on interest are considered advance payments of tax, which may be credited against the final tax liability for the year. Interest paid on loans and overdrafts to resident banks and Pakistani branches of nonresident banks and financial institutions is not subject to withholding tax.
- (e) The general withholding tax rate for royalties is 15%. This tax is considered to be a final tax for nonresident recipients of royalties. However, if royalties are derived with respect to properties or rights effectively connected with a permanent establishment (PE) of a nonresident, a 30% withholding tax rate is imposed, unless a nondeduction certificate is obtained by the PE. If such a certificate is obtained, no tax is withheld. The 30% withholding tax may be credited against the final tax liability.
- (f) Fees for technical services do not include consideration for construction, assembly or similar projects of the recipient (such consideration is subject to a 6% withholding tax) or consideration that is taxable as salary. The general withholding tax rate is 15% of the gross amount of the payment. This withholding tax is considered to be a final tax for nonresident recipients. However, if technical services are rendered through a PE in Pakistan, the 6% rate applies. The 6% tax is considered to be an advance payment of tax by the nonresident recipient of such technical services fees and may be credited against the final tax liability.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies that are resident in Pakistan are subject to corporation tax on their worldwide income. Tax is levied

on the total amount of income earned from all sources in the company's accounting period, including dividends and taxable capital gains. Branches of foreign companies and nonresident companies are taxed only on Pakistan-source income. A company is resident in Pakistan if it is incorporated in Pakistan or if its control and management are exercised wholly or almost wholly in Pakistan during the tax year. Company is defined to include the following:

- A company as defined in the Companies Ordinance, 1984;
- A body corporate formed by or under any law in force in Pakistan;
- An entity incorporated by or under the corporation law of a country other than Pakistan;
- The government of a province;
- A local authority;
- A foreign association that the Central Board of Revenue declares to be a company; and
- A modaraba, trust, cooperative society or a finance society established under or created by any law currently in force.

**Tax Rates.** For the 2008 tax year, the standard corporate income tax rate is 35%.

Small companies are subject to tax at a rate of 20% and are exempt from the minimum tax (see below). They are not required to withhold tax that would otherwise apply to payments for purchases of goods and services or with respect to the execution of contracts.

Small companies are companies that meet the following conditions:

- They have paid-up capital and undistributed reserves of not exceeding Rs. 25 million;
- They have no more than 250 employees at any time during the year;
- They have annual turnover not exceeding Rs. 250 million; and
- They were not formed as a result of a restructuring involving the splitting up or reorganization of an already existing business.

Resident companies are subject to a minimum income tax equal to 0.5% of gross receipts from sales of goods, services rendered and the execution of contracts, if the actual tax liability is less than the amount of the minimum tax. The excess of the minimum tax over the actual tax liability may be carried forward to offset actual tax liability for the following five tax years.

The gross revenue of nonresidents' air transportation and shipping businesses is taxed at 3% and 8%, respectively. This income is not subject to any other tax including withholding tax.

Certain types of income are subject to final withholding taxes. For information regarding these taxes, see Section A and *Withholding Taxes* below.

**Tax Incentives.** Some of the significant tax incentives available in Pakistan are described in the following paragraphs.

Private sector projects engaged in the generation of electricity are exempt from tax. However, this exemption is not available to oil-fired electricity generation plants set up during the period of 22 October 2002 through 30 June 2006.

Income derived by nonresidents not operating in Pakistan from the foreign-currency account scheme held at authorized banks in Pakistan or from certificates of investment issued by investment banks in accordance with the foreign-currency account scheme introduced by the State Bank of Pakistan is exempt from tax.

Income derived from instruments of redeemable capital, as defined in the Companies Ordinance, 1984, by the National Investment (Unit) Trust of Pakistan established by the National Investment Trust Limited or by mutual funds, investment companies or collective-investment schemes approved by the Securities and Exchange Commission is exempt from tax if such enterprises distribute at least 90% of their income to their unit holders.

Income derived by nonresidents not operating in Pakistan from federal government securities and redeemable capital, as defined in the Companies Ordinance, 1984, that are listed on a registered stock exchange is exempt from tax if such securities and capital were issued or purchased before 1 July 2004 and if such investments were made exclusively with foreign exchange remitted into Pakistan through a special convertible rupee account maintained with a bank in Pakistan.

Mutual funds, investment companies registered under the Non Banking Finance Companies (Establishment and Regulations) Rules, 2003, unit trust schemes established by asset management companies registered under the Assets Management Companies Rules, 1995 and real estate investment trusts approved and authorized under the Real Estate Investment Trust Rules, 2006 are exempt from tax if at least 90% of their accounting income for the year, reduced by capital gains, whether realized or unrealized, is distributed to their unit holders, certificate holders or shareholders.

Income derived from the export of computer software developed in Pakistan and related services is exempt from tax up to 30 June 2016.

**Capital Gains.** Only 75% of capital gains derived from transfers of capital assets, excluding immovable properties and assets on which tax depreciation or amortization is claimed, is taxed if the assets were held for more than 12 months. Capital gains on assets held for 12 months or less are taxed in full at the normal corporate rates. Capital gains from the transfer of shares of listed companies are exempt for financial years ending on or before 30 June 2008.

Capital losses can be offset only against capital gains. Capital losses can be carried forward for six years.

### **Administration**

*Filing Requirements.* The tax year commences on 1 July and ends on 30 June. Companies are required to end their fiscal years on 30 June. Special permission is required from the Commissioner of Income Tax to use a different year-end. The Central Board of Revenue has specified 30 September as the year-end for certain industries, such as sugar and textiles, and 31 December as the year-end for insurance companies.

An income tax return must be filed by 30 September of the following year if the company's year-end is from 1 July through 31 December and by the following 31 December if the year-end is from



1 January through 30 June. Any balance due after deducting advance payments and withholding taxes must be paid when the tax return is filed.

*Advance Tax Payments.* Advance tax is payable quarterly based on the tax charged for the most recent tax year. If the tax liability is estimated to be more or less than the tax charged for the prior tax year, an estimate of tax liability can be filed and advance tax liability can be paid in accordance with such estimate, subject to certain conditions. The due dates for the advance tax payments are 15 September, 15 December, 15 March and 15 June.

*Withholding Taxes.* Withholding tax is an interim tax payment that may or may not be the final tax liability. Amounts withheld that are not final taxes are credited to the final tax liability of the taxpayer for the relevant year.

In addition to the withholding taxes listed in Section A, payments by corporations are subject to the following withholding taxes.

Type of Payment	Rate (%)
Foreign-exchange proceeds from exports of goods	1 (a)
Rent for immovable property	5 (a)
Payments for goods	
Specified goods	1.5 (b)
Other goods	3.5 (b)
Payments for imported goods	5 (c)
Payments under executed contracts for construction, assembly and similar projects	6 (d)
Payments for services	
Rendered by residents	
Transport services	2
Other services	6 (e)
Rendered by nonresidents through a PE	6
Brokerage and commission	
Indenting commission	5 (f)(g)
Other commission and brokerage	5/10 (f)(g)
Payments to employees	– (f)(h)
Trading of shares on a registered stock exchange	0.01/10 (i)
Cash withdrawals exceeding Rs. 25,000	0.2 (j)

- (a) This tax is a final tax that is imposed on both residents and nonresidents.
- (b) This tax applies to residents and to PEs of nonresidents in Pakistan. It is a final tax for entities (other than listed companies) engaged in trading.
- (c) This tax is a final tax for entities engaged in trading.
- (d) Nonresident contractors may irrevocably elect to treat the withholding tax as a final tax. The withholding tax is a final tax for all resident contractors other than listed companies.
- (e) For corporate taxpayers, the tax is considered an advance payment of tax, which may be credited against the final tax liability for the year. For all other categories of taxpayers, the tax is considered a final tax.
- (f) This tax is imposed on residents and nonresidents.
- (g) The 5% rate applies to payments to indenting commission agents and advertising agents. The 10% rate applies to payments to travel agents, insurance agents and other commission and brokerage. The tax is considered to be a final tax.
- (h) The applicable rate depends on the employee.
- (i) The 0.01% rate applies to the traded value (sales price) of shares traded on the stock exchange. The 0.01% tax is withheld from the sales price when the shares are sold. The 10% rate applies to the carryover charge received on the

financing of carryover trades. In a carryover trade, an investor acquires shares through financing arranged by brokers through financiers. In this type of financing, the financiers purchase and sell back the shares to the same party, usually on an overnight basis, at a pre-arranged resale price, which includes the interest/mark-up. Such interest/mark-up is known as the carryover charge, which is subject to a 10% withholding tax. It is likely that carryover trading will be replaced by margin financing in the near future. The 0.01% tax is considered to be a final tax for the investor. The 10% tax is considered to be an advance payment of tax, which may be credited against the final tax liability for the year.

- (j) The 0.2% rate applies to all withdrawals exceeding Rs. 25,000 except for withdrawals by the following: the federal government or provincial governments; foreign diplomats; diplomatic missions in Pakistan; persons who produce a certificate from the commissioner that the person's income is exempt from tax. The withholding tax is imposed on the portion of the payment exceeding Rs. 25,000.

In general, for payments not listed in the above tables or in Section A, withholding tax is imposed at a rate of 30% on payments to nonresidents subject to tax in Pakistan.

*Interest and Penalties.* For a failure to file an income tax return by the due date, a penalty equal to 0.1% of the tax payable for each day of default is imposed, subject to a minimum of Rs. 500 and a maximum of 25% of the tax payable.

In addition, interest and penalties are imposed in the following circumstances:

- Interest at a rate of 12% a year is charged if tax, including advance tax payments, are not made or are only partially paid;
- A penalty of up to 100% may be levied for nonpayment of tax due; and
- If income is concealed, a penalty equal to 100% of the tax payable is levied in addition to the normal tax payable.

The income tax department is required to pay compensation at the rate of 6% on refunds due that have not been paid within three months of the due date, from the expiration of the three months up to the date on which the refund is paid.

**Dividends.** Dividends are subject to withholding tax at the general rate of 10%. The withholding tax is considered to be an advance payment of tax for a corporate recipient of dividends and may be credited against the final tax liability, which is calculated at a rate of 10% after deduction of allowable expenses. A 7.5% rate is imposed on certain dividends (see footnote [c] to Section A). Intercorporate dividends paid within a wholly owned group are exempt from tax.

**Foreign Tax Relief.** A foreign tax credit is granted to resident companies with respect to foreign-source income at the average rate of Pakistani income tax or the actual foreign tax paid, whichever is less. If foreign income is derived under different heads (categories) of income, the amount of the allowable credit is applied separately to each head of income. However, income derived under a particular head of income from different locations is pooled together. A credit is allowed only if the foreign income tax is paid within two years after the end of the tax year in which the foreign-source income is derived.

### C. Determination of Trading Income

**General.** Assessments are generally based on the audited financial statements, subject to certain adjustments. Any income accruing

or arising, whether directly or indirectly, through or from a PE or any other business connection in Pakistan, through or from any asset, property or source of income in Pakistan, or through the transfer of a capital asset located in Pakistan, is subject to tax.

Expenses incurred to derive income from business that is subject to tax are allowed as deductions to arrive at taxable income. For branches of foreign companies, allocated head-office expenses may be deducted, up to an amount calculated by applying the ratio of Pakistani turnover to worldwide turnover.

**Inventories.** Inventory for a tax year is valued at the lower of cost or net realizable value of the inventory on hand at the end of the year. If a particular item of inventory is not readily identifiable, the first-in, first-out (FIFO) or weighted-average methods may be used. The valuation method should be applied consistently from year to year, but the method may be changed with the prior approval of the tax authorities.

**Provisions.** General provisions for bad debts are not allowed as deductions from income. However, a charge for specific bad debts may be allowed if the debt is accepted by the income tax officer as irrecoverable.

Banks, nonbanking finance companies and the House Building Finance Corporation may claim a deduction equal to 3% of the income from consumer loans for the maintenance of a reserve for bad debts resulting from such loans. In this context, a consumer loan is a loan obtained for personal, family or household purposes and includes debts resulting from the use of a credit card or insurance premium financing.

**Tax Depreciation.** Depreciation recorded in the financial statements is not allowed for tax purposes. Tax depreciation allowances are given on assets, such as buildings, plant and machinery, computers and furniture owned by the company and used for business purposes. A depreciation allowance for a full year is allowed in the year the asset is placed in service, but no depreciation allowance is allowed in the year of disposal of the asset.

Depreciation is calculated using the declining-balance method. The following depreciation rates are generally used.

<b>Assets</b>	<b>Annual Allowance %</b>
Buildings	10
Furniture and fixtures	15
Machinery and plant, including computer hardware, technical or professional books, ships, aircraft and motor vehicles	15 to 30
Below-ground installations (including offshore) of mineral oil enterprises	100
Offshore platform and production installations of mineral oil enterprises	20

To promote industrial development in Pakistan, certain other allowances relating to capital expenditure have been introduced. These allowances are summarized below.

*Initial Allowance.* An initial depreciation allowance at a rate of 50% is granted for eligible depreciable assets placed in service in Pakistan. The allowance is granted in the tax year in which the assets are first placed in service in Pakistan and used in the taxpayer's business for the first time, or in the tax year in which commercial production begins, whichever is later.

*Amortization of Intangibles.* Amortization of intangibles is allowed over the normal useful life of intangibles. If an intangible does not have an ascertainable useful life or if the normal useful life is more than ten years, for purposes of calculating annual amortization, the normal useful life is considered to be 10 years for the purposes of calculating amortization.

*Amortization of Expenses Incurred Before the Commencement of Business.* The amortization of expenses incurred before the commencement of business is allowed on a straight-line basis at an annual rate of 20%.

**Relief for Losses.** Business losses, other than capital losses and losses arising out of speculative transactions, may be carried forward to offset profit in subsequent years for a period not exceeding six years. Unabsorbed depreciation may be carried forward indefinitely.

**Groups of Companies.** The Finance Act, 2007 introduced the concept of group taxation in Pakistan. Under the act, a group of companies comprising holding companies and subsidiaries in a 100%-owned group can file its tax returns as one fiscal unit, subject to the satisfaction of certain conditions.

In addition, on the satisfaction of certain conditions, group companies can surrender their assessed losses (excluding capital losses and loss carryforwards) for the tax year to other group companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Sales tax, on the supply of goods, on the cost of imported goods and on certain services; certain items and classes of persons are exempt	0/15/17.5/20
Excise duties, on specified goods imported or manufactured in Pakistan and on specified services provided or rendered in Pakistan (the government may declare any goods or class of goods exempt)	Various
State and local taxes; an annual trade tax on companies, including branches of foreign companies	Various
Capital value tax, on purchases of Airplane tickets for international travel	1.5
Immovable property	2
Tax on purchase of shares on a registered stock exchange; tax imposed on the total purchase price for the shares; tax paid by purchaser	0.02

Nature of Tax	Rate (%)
Net assets tax ( <i>zakat</i> , a religious levy), on certain assets of companies having a majority of Muslim shareholders who are citizens of Pakistan	2.5
Social security contributions, on salaries of employees (maximum of Rs. 350 per month)	7
Employees' old age benefits, on salaries of employees (maximum of Rs. 276 per month)	5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** In general, remittances in foreign currency are regulated, and all remittances are subject to clearance by the State Bank of Pakistan. However, foreign currency may be remitted through the secondary market.

**Debt-to-Equity Rules.** The concept of thin capitalization was recently added for the first time to the tax law. Under the new thin-capitalization rules, if the foreign debt-to-equity ratio of a foreign-controlled company (other than a financial institution or a banking company) exceeds 3:1, interest paid on foreign debt in excess of the 3:1 ratio is not deductible.

The State Bank of Pakistan prescribes that borrowers from financial institutions have a debt-to-equity ratio of 60:40. This may be increased for small projects costing up to Rs. 50 million or by special government permission.

Loans and overdrafts to companies (other than banking companies), controlled directly or indirectly by persons resident outside Pakistan, and to branches of foreign companies are generally restricted to certain specified percentages of the entities' paid-up capital, reserves or head-office investment in Pakistan. The percentage varies, depending on whether the entities are manufacturing companies, semimanufacturing companies, trading companies or branches of foreign companies operating in Pakistan. No limits apply, however, to companies exporting at least 50% of their products.

To meet their working capital requirements, foreign controlled companies and branches of foreign companies may contract working capital loans in foreign currency that can be repatriated. The State Bank of Pakistan also permits foreign controlled companies to take out additional matching loans and overdrafts in rupees equal to the amount of the loans that may be repatriated. Other loans in rupees are permitted in special circumstances. Certain guarantees issued on behalf of foreign controlled companies are treated as debt for purposes of the company's borrowing entitlement.

## F. Treaty Withholding Tax Rates

The maximum withholding rates provided in the treaties are shown in the following table.

	Dividends %	Interest %	Royalties %
Austria	10/20 (d)	– (b)(g)	20
Azerbaijan	10	10	10
Bangladesh	15	15 (b)	15
Belgium	10/15 (d)	15 (b)	20 (m)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Bosnia and Herzegovina	10	20	15
Canada	15/20 (d)	25	20 (c)
China	10	10	12.5
Denmark	15	15 (b)(f)	12
Egypt	15/30 (q)	15 (t)	15
Finland	12/15/20 (s)	15 (i)	10
France	10/15 (o)	10 (t)	10
Germany	10/15 (v)	20 (b)(i)	10
Hungary	15/20 (p)	15 (b)	15
Indonesia	10/15 (p)	15	15
Iran	5	10	10
Ireland	10 (h)	– (b)(g)	– (e)
Italy	15/25 (r)	30 (t)	30
Japan	3.75 (h)	30 (b)	– (e)
Kazakhstan	12.5/15 (o)	12.5 (t)	15
Korea	10/12.5 (d)	12.5 (b)	10
Kuwait	10	10 (t)	10
Libya	15	– (g)	– (g)
Malaysia	15/20 (d)	15 (b)(f)	15
Malta	15 (a)	10 (b)	10
Mauritius	10	10 (b)	12.5
Nepal	10/15 (a)	10/15 (f)(i)	15
Netherlands	10/20 (p)	20 (b)(l)	5/15 (j)
Nigeria	12.5/15 (o)	15	15
Norway	15	10 (b)	12
Oman	10/12.5 (o)	10 (t)	12.5
Philippines	15/25 (p)	15 (b)	25 (k)
Poland	15 (d)	– (b)(g)	20 (c)
Portugal	10/15 (a)	10 (f)	10
Qatar	5/10 (o)	10 (t)	10
Romania	10	10 (f)	12.5
Saudi Arabia	5/10 (a)	10 (f)	10
Singapore	10/12.5/15 (u)	12.5	10
South Africa	10/15 (o)	10 (t)	10
Sri Lanka	15	10 (b)	20
Sweden	15	15 (b)	10
Switzerland	10/20 (d)	30 (f)	– (e)
Syria	10	10	10/15/18 (w)
Tajikistan	5/10 (p)	10 (x)(y)	10 (x)
Thailand	15/25 (d)	25 (i)	10/20 (j)
Tunisia	10	13	10
Turkey	10/15 (d)	10	10
Turkmenistan	10	10	10
United Arab Emirates	10/15 (v)	10 (b)	12
United Kingdom	10/15/20 (n)	15 (b)	12.5
United States	3.75 (h)	– (g)	– (e)
Uzbekistan	10	10 (b)	15
Vietnam	15	15 (y)	15
Yemen	10	10 (y)	10
Nontreaty countries	7.5/10 (z)	30 (z)	15 (z)

(a) Treaty-determined percentage holding required.

(b) Interest paid to the government or, in certain circumstances, to a financial institution owned or controlled by the government is exempt.

- (c) Fifteen percent for industrial, commercial or scientific know-how.
- (d) Treaty-determined percentage holding required, and payer must be engaged in an industrial undertaking; otherwise, higher rate or normal rate applies.
- (e) Royalties are exempt from withholding tax to the extent they represent a fair and reasonable consideration.
- (f) Certain approved loans are exempt.
- (g) Normal rates apply.
- (h) Treaty-determined percentage holding by a public company required and the profits out of which the dividends are paid must be derived from an industrial undertaking; otherwise, normal rates apply.
- (i) Ten percent if the recipient is a financial institution.
- (j) Lower amount for literary, artistic or scientific royalties.
- (k) Fifteen percent if payer is an enterprise engaged in preferred activities.
- (l) Rate reduced to 10% if recipient is a bank or financial institution or if certain types of contracts apply. Rate reduced to 15% if recipient holds 25% of the capital of the paying company.
- (m) Copyright royalties and other similar payments for literary, dramatic, musical or artistic work are exempt.
- (n) Fifteen percent if the recipient is a company. Further reduced to 10% if the treaty-determined percentage is held by the recipient and the industrial undertaking is set up in Pakistan after 8 December 1987. Twenty percent in other cases.
- (o) Lower rate applies if the recipient is a company that controls, directly or indirectly, 10% of the voting power in the company paying the dividend.
- (p) Lower rate applies if recipient is a company that owns directly at least 25% of the capital of the paying company.
- (q) The 15% rate applies to dividends paid to companies. The 30% rate applies to other dividends.
- (r) The 15% rate applies if the recipient is a company that owns directly at least 25% of the capital of the payer and is engaged in an industrial undertaking.
- (s) The 12% rate applies if the recipient is a company that owns directly at least 25% of the capital of the payer; the 15% rate applies to dividends paid to other companies; and the 20% rate applies to other dividends.
- (t) Interest paid to the government or to an agency of or an instrumentality owned by the government is exempt from tax.
- (u) The 10% rate applies if the payer is engaged in an industrial undertaking and if the recipient is a company; the 12.5% rate applies if the recipient is a company; the 15% rate applies in all other cases.
- (v) The lower rate applies if the beneficial owner of the dividends is a company that owns at least 20% of the shares of the payer.
- (w) The 10% rate applies to royalties for cinematographic films and to tapes for television or radio broadcasting. The 15% rate applies to royalties for literary, artistic or scientific works.
- (x) The treaty rate applies to the extent the amount represents a fair and reasonable consideration.
- (y) Interest paid to the government or to the central bank is exempt.
- (z) See Section A.

Pakistan has also entered into treaties that cover only shipping and air transport. These treaties are not included in the above table.

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## PALESTINIAN AUTHORITY

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(Country Code 970 within Middle East only)

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**A. At a Glance**

Corporate Income Tax Rate (%)	15
Capital Gains Tax Rate (%)	0 (a)
Branch Tax Rate (%)	15 (b)
Withholding Tax (%) (c)	
Dividends	8 to 16 (a)
Interest	8 to 10 (d)
Royalties from Patents, Know-how, etc.	0
Payments for Services	5 to 16 (d)(e)
Other Payments to Nonresidents	16
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) See Section B.

(b) Branches operating in Palestine are taxed like Palestinian companies.

(c) The withholding taxes may be credited against income tax due.

(d) The withholding tax applies to resident and nonresident companies.

(e) The withholding tax rate depends on the type of service provided.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Palestinian companies and branches of foreign companies carrying on business in Palestine are subject to corporate income tax only on their income derived from Palestine. A company is considered Palestinian if it is registered in Palestine. A branch of a foreign company registered in Palestine is treated like a Palestinian company.

**Rates of Corporate Income Tax.** The standard rate of corporate income tax is 15%.

Foreign companies operating in Palestine are subject to a corporate income tax at a rate of 16%.

Under the Law for Encouragement of Investments, approved companies may benefit from an income tax exemption of 1 to 5 years and a reduced corporate income tax rate of 10% for 5 to 20 years, depending on the amount invested. An application must be filed with the Palestinian Investment Promotion Agency to obtain approval for these tax benefits.

**Capital Gains.** In general, capital gains are not taxable, and capital losses are not deductible. However, gains on sales of shares derived by financial institutions that trade shares on a regular basis are taxable, and losses on such sales are deductible.

**Administration.** Companies must file a corporate tax return by the end of the fourth month after its year-end. All companies must use the calendar year as its tax year, unless the tax authorities approve a different tax year. As a result, tax returns are generally due on 30 April. Any balance of tax due must be paid by the due date of filing the annual tax return.

The tax regulations provide incentives for advance tax payments made during the tax year. A 10% discount is granted for payments



made during the first and second months of the tax year and 8% discount is granted for payments made during the third month of the tax year.

Special incentives are granted for companies who file and pay within a certain period after the tax year-end. For filing and paying during January, February and March after the year-end, the discount is 6%, 4% or 2%, respectively.

**Dividends.** Tax instructions state that dividends paid are subject to withholding tax at a rate of 8% to 16%. The instructions also state that all payments to nonresidents are subject to withholding tax at a rate of 16%. However, in practice, Palestinian companies have not withheld tax on dividends paid to local and foreign investors. A debate is currently ongoing in the Income Tax Department as to whether dividends should be subject to withholding tax. However, at the time of writing, no final decision had been reached.

### C. Determination of Trading Income

**General.** Taxable income is the income reported in the companies' financial statements, subject to certain adjustments.

All types of income are taxable, unless otherwise stated in the law. Income derived from agriculture is exempt from tax.

All business expenses incurred to generate income may be deducted, but the deductibility of certain expenses is limited. A specified percentage of entertainment expenses is not deductible. The deduction for head office charges is limited to the lower of 5% of net taxable income or US\$30,000.

**Inventories.** Companies can use any method allowed for accounting purposes to value their inventories.

**Provisions.** In general, provisions are not deductible for tax purposes. Commercial banks can deduct from taxable income a provision for doubtful accounts equal to the lower of the following:

- 10% of the value of defaulted credit facilities;
- 2% of gross taxable income; or
- US\$150,000.

In all cases, the provision deduction may not exceed 5% of net taxable income.

**Depreciation.** The Palestinian tax law provides straight-line tax depreciation rates for various types of assets. These rates are applied to the purchase prices for the assets. If the rates for accounting purposes are greater than the tax depreciation rates, the excess is disallowed for tax purposes. The following are the straight-line rates for certain assets.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	2 to 3
Industrial buildings	4
Transportation	
Land transportation	
Cars, trains, buses, trucks and trailers	10
Cars and buses for public transportation and for driving schools	12

<b>Asset</b>	<b>Rate (%)</b>
Air transportation	
Aircraft	8
Cable cars	5
Sea transportation	
Ships for transportation, cargo and freezing	5
Boats and yachts	8
Sport and racing boats	15
Other ships or boats that work over or under the water	15
Office equipment	7 to 10
Equipment used in industrial activities	5 to 10
Equipment used in agricultural activities	7 to 25
Technological equipment	20 to 25
Office furniture and decoration	10 to 15
Computers	20

**Relief for Losses.** Companies may carry forward losses to offset profits in the following five tax years.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT)	
Standard rate	14.5
Wages and profit tax; imposed on financial institutions instead of VAT and in addition to corporate income tax	14.5
Property tax; based on assessed rental value	17

#### **E. Foreign-Exchange Controls**

The Palestinian Authority does not impose any foreign-exchange controls.

The Palestinian Authority does not have a currency. Major currencies used in Palestine include the Israeli shekel (NIS), Jordanian dinar (JD) and the U.S. dollar (US\$).

#### **F. Tax Treaties**

The Palestinian Authority has entered into tax treaties related to customs with the European Union, Japan, the United States and certain Arab countries. Under these treaties, goods imported from the treaty countries have either full or limited customs exemption, depending on the type of goods imported.

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30 (a)
Withholding Tax (%) (b)	
Dividends (a)(c)	
On Nominative Shares	10
On Bearer Shares	20
Interest	15 (d)
Royalties from Patents, Know-how, etc.	15
Payments on Leases	30
Payments for Professional Services	
Rendered in Panama	30
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (e)

- (a) See Section B for details concerning deemed dividend tax.  
 (b) The withholding taxes apply only to nonresidents. Nonresident companies are entities not incorporated in Panama.  
 (c) Capitalized dividends are exempt from tax. See Section B.  
 (d) Certain interest is exempt from tax. See Section C.  
 (e) For details, see Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporations, partnerships, branches of foreign corporations, limited liability companies and any other entity considered a legal entity by law are subject to income tax on any profits or income generated in or derived from Panama. Income that does not arise in Panama or is not derived from Panama is not subject to tax in Panama.

**Corporate Income Tax Rates.** Legal entities, including branches of foreign companies, are subject to tax on their Panamanian-source income at a rate of 30%.

If a corporation does not declare any dividends during the year, it must pay a deemed dividend tax, or minimum dividend tax, amounting to 4% of its taxable income less income tax.

Branches of foreign corporations are subject to deemed dividend tax at a rate of 10% of their taxable income less income tax.

For companies operating in the Colon Free Zone, the regular income tax rate of 30% applies only to income derived from sales to companies located in Panama.

Free-zone companies are not subject to income tax or deemed dividend tax on their taxable income derived from re-export operations.

**Headquarters Law.** A new law creates a special tax-incentive system for multinational companies that establish their headquarters in Panama.

The new law provides that a headquarters is the office that renders services, such as management services, to operations based in a geographically limited area or to the global operation as a whole. Under the new law, a headquarters may provide only specified services, including the following: technical assistance; financial and accounting services; logistics or warehousing services to the multinational group; marketing and publicity; and plot or construction design. These services must be part of the ordinary course of business of the parent company or its affiliates.

Under the new law, the headquarters must belong to a multinational company with either regional or international operations or significant operations in the country of origin. To create a domicile in Panama, a license granted by the Commission of Licenses of the Multinational Domiciled Companies of the Ministry of Commerce and Industry must be obtained.

Companies granted a license are exempt from income tax and value-added tax (VAT). However, the VAT exemption applies only to the export of services. The VAT exemption does not apply to imports made by the headquarters or the sale of services rendered within Panama.

The new law creates a special immigration regime for foreign employees working for the company in Panama. Permanent visas can be obtained for expatriates with an employment contract not exceeding five years. These employees are exempt from income tax and social taxes if they receive all of their compensation directly from the head office outside of Panama and not through the local payroll.

Foreigners who have special temporary visas are not subject to income tax if they satisfy the following conditions:

- They direct from an office established in Panama transactions that take place or produce effects abroad; and
- They receive their income directly from the home office established abroad.

However, contributions to the social security regime are required for such foreigners.

### **Capital Gains**

*Shares and Quotas.* Under Section 701(e) of the Panamanian Tax Code, capital gains derived from the transfers of shares or quotas are subject to capital gains tax if the shares or quotas were issued by a company that has operations or assets located in Panama. The tax applies regardless of the place where the transaction takes place. Law No. 18 of 19 June 2006 amended Section 701(e) of the Tax Code. However, regulations for the new law have not yet been enacted. The following are significant rules contained in Law No. 18:

- Capital gains derived from transfers of shares in Panama that constitute taxable income are subject to income tax at a reduced rate of 10%.
- The buyer must withhold 5% from the purchase price as an advance income tax payment and remit the withholding tax to the tax authorities within 10 days following the date on which the payment was made according to the transaction documents. Failure to comply with this obligation transfers the liability to the seller of the shares.

- The 5% tax withheld by the buyer can be credited against the final 10% capital gain tax. However, the seller may elect to consider the 5% tax to be the final income tax payment.
- If the 5% tax withheld by the buyer is higher than the 10% income tax on the capital gain, the seller may file a special income tax return to request a refund.
- Income derived from capital gains is included in the seller's ordinary income for the fiscal year.

*Movable Assets.* Capital gains derived from transfers of movable assets are subject to income tax at a reduced rate of 10%.

*Real Estate.* Capital gains derived from the transfer of real estate are subject to a 10% tax rate. Under Section 701(a) of the Tax Code, and Sections 92, 93 and 94 of Executive Decree No. 170 of 1993, capital gains derived from transfers of real estate are computed as follows:

Sale price	X
– Basic cost	(X)
– Cost of improvements not included in the original acquisition cost or the cadastral value	(X)
– Sales expenses	(X)
= Capital gain	<u>X</u>

For purposes of the above calculation, the basic cost equals the lower of the cadastral value registered as of 2 February 2005 and the book value, unless the taxpayer had already filed and received approval to update the cadastral value in accordance with Law No. 6 of 2005. The due date for submitting an updated cadastral value has been extended to 31 December 2007. The cost of improvements may be deducted from the capital gain if it has been declared before the Panamanian Public Registry.

However, if the selling of real estate is the taxpayer's ordinary trade or business (more than 10 sales of properties within a fiscal year), the capital gain is subject to the corporate income tax at a rate of 30%.

*Transfer Tax.* Under Section 1 of Law No. 6 of 2005, transfer tax at a rate of 2% is imposed on the higher of the following:

- Sales price set forth in the public deed of transfer; or
- The cadastral value of the property on the date of the acquisition, plus any increase in value derived from improvements, plus 5% per year computed on the sum of the cadastral value and the improvements.

The 2% transfer tax can be credited against the capital gains tax that may be derived from the transfer of the same real estate if the sale of real estate constitutes the taxpayer's ordinary trade or business. The 2% transfer tax cannot be credited against other taxes. To execute the deed of transfer before a Notary Public, the seller of real estate must submit evidence to demonstrate that the corresponding transfer tax and capital gains tax have been paid.

**Administration.** The calendar year is the fiscal year. However, under certain circumstances, a special fiscal year may be requested from the General Director of Internal Revenue. Businesses earning income subject to Panamanian tax must file annual income tax returns even if the net result for the period is a loss.

Corporations having no Panamanian taxable income or loss are not required to file income tax returns. Tax returns are due 90 days after the end of the fiscal year. The regulations provide for an extension of time of up to two months to file an income tax return if the corporation pays the estimated tax due. If an extension is obtained, any tax that is due when the return is filed is subject to interest at a rate of 2% above the local banking rate. Tax returns are filed using forms provided by the Ministry of Finance and Treasury.

Together with the tax returns filed every year, corporations must file an estimated income tax return, which is a section of the annual income tax return. The estimated taxable income may not be lower than the preceding year's actual taxable income, unless the taxpayer can justify a lower amount. The estimated tax is payable in three quarterly installments. If the actual taxable income is lower than the estimated income, any remaining credits are applied toward the following year's estimated income tax.

**Dividends.** Dividends derived from taxable income are taxed at the source at a single rate of 10% for nominative shares and at the rate of 20% for bearer shares. A corporation paying a dividend must withhold the tax and remit the withholding tax to the government within 10 working days after declaring or paying the dividend, whichever occurs first. Capitalized dividends are not subject to tax. During the five-year period after the capitalization, a company may not reacquire its own shares as treasury shares or make loans to its shareholders or partners. In addition, within six months of the capitalization, the shareholders of the company must repay any amounts owed to the company that are outstanding on the date of the capitalization. Dividends paid by free-zone companies out of income derived from re-export sales are not subject to tax.

**Withholding Taxes.** A 15% withholding tax is imposed on commissions, financial charges, taxable interest (see Section C for details concerning exempt interest) and royalties paid to nonresident companies. Lease payments made abroad by companies not in the free zone are subject to withholding tax at the corporate rate. Payments for professional services rendered in Panama are subject to withholding tax at a rate of 30%. The tax must be withheld by the enterprise that receives the benefits of the loans, leases or professional services, and must be remitted to the government within 10 days after the tax is withheld or the account is credited, whichever occurs first.

**Foreign Tax Relief.** Because Panama taxes only income sourced in Panama, regardless of where payment is received or the residence of the taxpayer, no credit or deduction is available for any foreign taxes paid.

### **C. Determination of Trading Income**

**General.** Revenues must be recognized in the year in which they are earned. Construction companies may recognize long-term contract revenues either by the percentage-of-completion method or by the completed-contract method, unless the cash basis of accounting is being used. The installment-sales method of recognizing revenue is not permitted by the Panamanian Fiscal Code.

Earnings derived from the following activities are not considered to be Panamanian source:

- Invoicing by an office established in Panama for sales of merchandise or goods for amounts greater than cost, provided the merchandise never enters Panama;
- Directing by an office established in Panama of transactions that are completed, consummated or take effect outside Panama; and
- Distributing dividends or profits derived from income not generated in Panama, including income derived from the two activities noted above.

The following income is specifically exempt from tax in Panama:

- Income of natural or legal persons, which is exempt as a result of public treaties or contracts authorized or approved by law;
- Revenues arising from international shipping commerce of national merchant ships legally registered in Panama, even if the shipping contract has been entered into in the country;
- Interest earned on or gains derived from the sale of government securities;
- Interest earned on savings or time-deposit accounts maintained in banking institutions established in Panama;
- Interest paid to official or semiofficial institutions of international organizations or foreign governments;
- Interest paid to foreign investors if the loan proceeds are used exclusively for the construction of housing projects for low-income individuals, as determined by the Ministry of Housing, or if the loan is guaranteed by a foreign government or institution;
- Royalties received or earned by persons or companies abroad from businesses established in the free zone; and
- Farming income if gross sales are less than B/. 150,000.

All expenses incurred wholly and exclusively in the production of taxable income or in the conservation of its source are allowed as deductions for income tax purposes, regardless of where the expense is incurred. Expenses of one tax year may not be deducted the following year, except those which, by their nature, cannot be determined precisely in the current tax year.

Interest is a deductible expense if it is incurred on loans or credits necessary for the production of taxable income. If nontaxable interest income from savings accounts or certificates of deposit is earned, the only interest deductible is the excess of the interest expense over the nontaxable interest income. Royalties are deductible, except for those paid abroad by free-zone companies.

**Inventories.** Inventories may be valued by using the first-in, first-out (FIFO), last-in, first-out (LIFO) or average-cost methods. Other methods may be allowed by the Director General of Internal Revenue. After a system of valuation is adopted, it may not be changed for five years.

**Provisions.** The only deductible reserves are those for depreciation, bad debts (1% of credit sales, up to 10% of total receivables) of entities other than banks and financial institutions and certain fringe benefits. Reserves for personal insurance and contingencies are not deductible.

**Tax Depreciation and Amortization Allowances.** Depreciation allowances are permitted for capital expenditures incurred in the pro-



duction of taxable income. Depreciation may be computed by using the straight-line, declining-balance or sum-of-the-years' digits methods. Depreciation is computed over the useful life of an asset. The minimum useful lives are 3 years for movable assets and 30 years for buildings.

Start-up expenses may be amortized over a period of five years. Improvements to leased properties must be amortized over the period of the lease. Purchasers of intangible assets, such as patents and goodwill, may claim straight-line amortization deductions for such assets when they derive income from such assets.

**Relief for Losses.** Commercial enterprises incurring a net operating loss in a fiscal year may deduct 20% of the loss in each of the five subsequent fiscal years. However, the deduction is limited to 50% of the taxable income in each subsequent fiscal year. Any portion of a net operating loss not deducted because of this limitation may not be deducted in a later fiscal year. Net operating loss carrybacks are not permitted.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; tax on the sale or transfer of any chattel, services and on imports of goods; certain goods and services are specifically exempt, such as medical services and fixed telephony	5
Commercial and industrial licenses; paid annually on corporate net worth (up to a maximum tax of B/. 40,000)	2
Municipal tax; based on the nature of the business activity and the amount of sales (up to a maximum tax of B/. 1,000 a month)	Various
Social security contributions and education tax, based on wages or salaries; paid by Employer	14.5
Employee	9.25
Excise taxes	
Imports and sales of alcoholic beverages	10
Imports and sales of tobacco and cigarettes	15
Imports of jewels, cars, motorcycles, jet skis, boats (including sailboats), noncommercial airplanes, cable and microwave television services and mobile phones	5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Panama does not impose foreign-exchange controls.

**Transfer Pricing.** Panama has transfer-pricing rules, which apply only to customs duties.

#### F. Tax Treaties

Panama has not entered into any income tax treaties with foreign countries.

# PARAGUAY

(Country Code 595)

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*This chapter reflects measures in Law 2421/04, which introduced major changes to the tax system in Paraguay. Law 2421/04 provided for changes to the corporate income tax rates and withholding tax rates, modifications of the value-added tax, the suspension of laws granting incentives to investors and the introduction of a personal income tax.*

## A. At a Glance

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Withholding Tax (%)	
Dividends	5/15*
Interest Paid to Financial Institutions	6
Royalties from Patents, Know-how, etc.	15
Gross Income from Production and Distribution of Films and Television Programs	12
Insurance and Reinsurance	3
Personal Transportation Fares, Telephone Charges and Internet Charges Paid from Paraguay or Vice Versa	3
International News Agencies	4.5
Freight Charges	3
Assignment of the Right to Use Containers	4.5
Branch Remittance Tax and Other Payments to Nonresident Principal Shareholders	30
Other Payments Not Specified Above	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	0

\* The 5% rate applies to dividends paid to residents and to nonresidents in Paraguay. The 15% rate applies to dividends paid abroad to nonresidents.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Tax is levied on Paraguay-source income of corporations and commercial enterprises. Income is considered to

be from a source in Paraguay if it is derived from capital, property or rights in Paraguay or from a business in Paraguay. Residence is not relevant. Under Law 2421/04, for companies domiciled in Paraguay, income derived from capital invested abroad is considered Paraguayan-source income and, accordingly, subject to corporate income tax.

**Rate of Corporate Income Tax.** Under Law 2421/04, the corporate income tax rate is 10%. Branches are also subject to dividend withholding tax at a rate of 5% and to a 15% withholding tax on remittances to their home offices.

Law 2421/04 suspended laws granting incentives to investors.

**Capital Gains.** Capital gains are taxed at the corporate income tax rate.

**Administration.** The tax year is the calendar year. Returns must be filed within four months after the end of the financial year. Penalties are imposed for failure to comply with these rules.

**Dividends.** A 5% withholding tax is imposed on dividends paid to residents and to nonresidents in Paraguay. A 15% withholding tax is imposed on dividends paid abroad to nonresidents.

### C. Determination of Trading Income

**General.** Taxable income is based on profits from the financial statements after tax adjustments. Expenses are generally deductible if they are incurred for the purposes of the business and in the production of taxable income.

**Inventories.** Inventory is valued at the cost of production or acquisition. The cost may be calculated under the average-cost or first-in, first-out (FIFO) methods. After choosing a method, a corporation may not change it without prior authorization.

**Tax Depreciation.** Depreciation must be calculated using the straight-line method.

**Relief for Losses.** Under Law 2421/04, effective from 2005, loss carryforwards are not allowed.

**Groups of Companies.** Paraguayan law does not contain any measures for filing consolidated returns or for relieving losses within a group.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; imposed on goods sold, including imports, and services rendered in Paraguay; exports are exempt; in certain circumstances, payments of interest and royalties are subject to the tax	
Standard rate	10
Basic consumer food items, financial intermediation (loans and credits), pharmaceutical products and the leasing and sale of real estate	5

<b>Nature of Tax</b>	<b>Rate (%)</b>
Selective tax on consumption, on certain manufactured and imported goods, such as cigarettes, liquor and petroleum products	5 to 50
Stamp tax, on certain acts and documents relating to financial and banking transactions	0.1 to 1.74
Social security contributions for nonbank institutions, on payroll; paid by	
Employer	16.5
Employee	9

## **E. Foreign-Exchange Controls**

The central bank does not control the foreign-exchange market. A free-market rate of exchange prevails.

## **F. Tax Treaties**

Paraguay has not entered into tax treaties with any other jurisdiction, except for international freight agreements with Argentina and Chile to avoid double taxation.

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**Indirect Tax**

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**A. At a Glance**

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	4.1 (a)
Interest	30 (b)(c)
Royalties	30 (b)
Technical Assistance	15 (b)
Digital Services	30 (b)
Branch Remittance Tax	4.1 (a)
Net Operating Losses (Years)	
Carryback	0
Carryforward	4 or Unlimited (d)

- (a) The Dividend Tax, which is imposed at a rate of 4.1% and is generally withheld at source, is imposed on profits distributed to nonresidents and individuals. For further details regarding the Dividend Tax, see Section B.
- (b) This tax applies to payments to nonresidents.
- (c) A reduced rate of 4.99% or 1% applies to certain interest payments. For further details, see Section B.
- (d) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are subject to income tax on their worldwide taxable income. Resident companies are those incorporated in Peru. Branches and permanent establishments of foreign companies that are located in Peru and nonresident entities are taxed on income from Peruvian sources only.

**Tax Rates.** The corporate income tax rate is 30%.

A Dividend Tax at a rate of 4.1% is imposed on distributions of profits to nonresidents and individuals by resident companies and by branches, permanent establishments and agencies of foreign companies. This tax is generally withheld at source. However, if

certain circumstances existed on or before 31 December 2007, the company was required to pay the tax directly. For details regarding the Dividends Tax, see *Dividends* below.

**Tax Incentives.** Various significant tax incentives are available for investments in the following: mining enterprises; oil and gas licenses and services contracts; and certain agricultural activities. They are also available for investments in manufacturing industries located in the jungle, in designated tax-free zones and in borderline areas of the country.

**Capital Gains.** Capital gains are treated as ordinary income. Capital gains derived from transactions occurring on stock or commodity exchanges are exempt from income tax until 31 December 2008.

**Administration.** The mandatory closing date for business enterprises is 31 December. Tax returns must be filed by 31 March.

Companies must make advance payments of income tax. In general these advance payments are based on the monthly net income multiplied by a fraction, the numerator of which is the income tax of the preceding fiscal year before tax credits and the denominator of which is, in general, the net income for the preceding fiscal year. The applicable fraction can be reduced based on the net income as of 30 June. For the months of January and February, the income tax before tax credits and the net income used are from the fiscal year two years before the current fiscal year. Companies that are beginning their operations or did not calculate income tax for the preceding year must make monthly advance payments equal to 2% of monthly net income. When using this method, the percentage can be reduced based on the net income as of 31 January and 30 June.

Monthly advance payments are due on the ninth to the fifteenth business day, according to a schedule. Taxes and related penalties not paid by due dates are subject to interest charges, which are not deductible for tax purposes.

Entities that have not begun productive activities, companies that provide water services to the general public and companies in the process of liquidation are exempt from the requirement of additional advance payments. For companies that have not yet begun productive activities, the requirement is triggered in the year following the year in which such activities begin.

**Dividends.** A Dividend Tax at a rate of 4.1% applies to profits distributed to nonresidents and individuals, if a distribution agreement is adopted by the relevant corporate body on or after 1 January 2003. All profits distributed thereafter, including those corresponding to prior years, are subject to this tax. The Dividend Tax applies to distributions by Peruvian companies, as well as to distributions by Peruvian branches, permanent establishments and agencies of foreign companies. The income tax law specifies various transactions that are considered profits distributions by resident entities for purposes of the Dividend Tax. These transactions include the distribution of cash or assets, other than shares of the distributing company, and, under certain circumstances, a reduction in the capital of the company or a liquidation of the company. For permanent establishments, branches, and agencies of foreign

companies, a distribution of profits is deemed to occur on the deadline for filing their annual corporate income tax return (usually at the end of March of the year following the tax year).

The law also provides that if a resident company, or a branch, permanent establishment or agency of a foreign company, pays expenses that are not subject to further tax control or does not declare income that is discovered as a result of a tax audit, the amount of the payment or income is subject to the Dividend Tax. Dividend Tax for these items is paid directly by the resident entity or the branch or permanent establishment. The capitalization of equity accounts, such as profits and reserves, is not subject to the Dividend Tax.

**Interest.** Interest paid to nonresidents is generally subject to withholding tax at a rate of 30%. For interest paid to unaffiliated foreign lenders, the rate is reduced to 4.99% if all of the following conditions are satisfied:

- For loans in cash, the proceeds of the loan are brought into Peru as foreign currency through local banks or are used to finance the import of goods.
- The proceeds of the loan are used for business purposes in Peru.
- The participation of the foreign bank is not primarily intended to avoid the measures on transactions between related parties (back-to-back loans).
- The interest rate does not exceed either the U.S. prime rate plus six percentage points or the LIBOR (London interbank offer rate) plus seven percentage points. The additional six or seven percentage points cover expenses, commissions and any other charges related to the loan.

If the first three conditions described above are satisfied and the interest rate exceeds either the U.S. prime rate plus six points or the LIBOR plus seven points, only the excess interest is subject to withholding tax at the regular rate of 30%.

A 1% withholding tax is imposed on interest paid by financial institutions resident in Peru for the use of overseas credit lines in Peru.

Interest derived by entities from deposits in Peruvian banks is exempt from income tax until 31 December 2008. Interest earned on bonds issued by the government is exempt from tax. Capital gains and interest on bonds issued before 11 March 2007 by Peruvian corporations through public offerings in accordance with the requirements of the Peruvian corporate law are exempt from tax.

**Other Withholding Taxes.** Payments for technical assistance used in Peru are subject to withholding tax at an effective rate of 15%, regardless of whether the technical assistance is provided in Peru. To ensure the application of the 15% rate, a sworn declaration stating that the services were in the category of technical assistance and a certification from an international audit firm that the services were provided must be obtained.

Payments for digital services that are provided through the Internet and used in Peru are subject to withholding tax at an effective rate of 30%.

**Foreign Tax Relief.** Tax credits are permitted, within certain limits, for taxes paid abroad on income earned in foreign countries.

### C. Determination of Trading Income

**General.** Taxable income of business enterprises is generally computed by reducing gross revenue by the cost of goods sold and all expenses necessary to produce the income or to maintain the source of income. Certain types of revenue, however, must be computed as specified in the tax law, and some expenses are not fully deductible for tax purposes. Business transactions must be recorded in legally authorized books of account that are in full compliance with International Accounting Standards (IAS). The books must be maintained in Spanish and must be expressed in Peruvian currency. However, under certain circumstances, foreign investors who invest in foreign currency may sign an agreement with the state or with state-owned corporations that allow them to maintain their accounting books in foreign currency.

**Inflation Adjustments.** For accounting purposes, inflation adjustments apply only until 31 December 2004. Consequently, beginning 1 January 2005, transactions are recognized and recorded in local books at its historical value.

**Special Activities.** Nonresident corporations, including their branches and agencies, engaged in certain specified activities are subject to tax on only a percentage of their gross income derived from such activities. This tax is withheld at source. The following are the applicable percentages for some of these specified activities.

Activity	Applicable Percentage (%)
Air transportation	1 (a)(b)
Marine transportation	2 (a)(b)
Leasing of aircrafts	60 (c)
Leasing of ships	80 (c)
International news agencies	10 (a)

- (a) The withholding tax rate is 30%. As a result, the effective tax rates are 0.3% for air transportation, 0.6% for marine transportation and 3% for international news agencies.
- (b) This percentage applies to services rendered partly in Peru and partly abroad.
- (c) The withholding tax rate is 10%. As a result, the effective tax rates are 6% for leasing of aircrafts and 8% for leasing of ships.

**Inventories.** Inventories must be carried at cost. Cost may be determined specifically or by the first-in, first-out (FIFO), average, retail or basic inventory method. The last-in, first-out (LIFO) method is not permitted.

**Provisions.** Provisions for bad debts, bonuses, vacations, employees' severance indemnities and other expenses are allowed if made in accordance with certain tax regulations.

**Tax Depreciation.** Depreciation rates are applied to the acquisition cost of fixed assets. The following are some of the maximum annual depreciation rates allowed by law.

Asset	Maximum Rate (%)
Buildings and structures	3*
Cattle and fishing nets	25
Vehicles	20



<b>Asset</b>	<b>Maximum Rate (%)</b>
Machinery and equipment for construction, mining and oil activities	20
Machinery and equipment for other activities	10
Data processing equipment	25
Other fixed assets	10

\* This is a fixed rate rather than a maximum rate.

Taxpayers may apply any depreciation method for its fixed assets other than buildings and structures, taking into account the characteristics of the business as long as the resulting depreciation rate does not exceed the maximum rates stated above.

In general, except for buildings and structures, tax depreciation must match financial depreciation.

**Relief for Losses.** Taxpayers may select from the following two systems to obtain relief for their losses:

- Carrying forward losses to the four consecutive years following the year of the loss; or
- Carrying forward losses indefinitely, subject to an annual deductible limit equal to 50% of the taxpayer's taxable income in each year.

Loss carrybacks are not allowed.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Temporal net assets tax; imposed on companies, and on agencies, branches and permanent establishments of foreign entities; the tax base equals the value of the net assets of the taxpayer as of 31 December of the preceding year that exceeds S/. 1,000,000 (approximately US\$300,000); the tax payments may offset the advance payments required under the general income tax regime or may be claimed as a credit against the income tax payable for the tax year; a refund may be requested for any balance of tax payment that is not used in the current year; the tax does not apply to certain companies; tax is payable beginning in the year following the first year of productive activities	0.5
Sales tax, on the sale of goods, services and the import of most products	19
Excise tax, on goods and imports; the tax is either a fixed amount or an amount determined by applying a percentage rate	Various
Social security contributions to the Peruvian Health Social Security Office, on salaries and legal bonuses; paid by employer	9
Pension Fund; paid by employee	13

Nature of Tax	Rate (%)
<p>[Alternatively, employees may contribute approximately 11.8% of their salaries to the Private Pension Funds Trustee (AFP).]            Employees' profit sharing; calculated on pre-tax income and deductible as an expense in determining taxable income; rate varies depending on companies' activities (mining, fishing, manufacturing, telecommunications and other activities)</p>	5 to 10
<p>Tax on Financial Transactions; imposed on debits and credits in Peruvian bank accounts (2008 rate)</p>	0.07

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Peru does not impose foreign-currency controls. Exchange rates are determined by supply and demand.

**Means of Payment.** Any payment in excess of S/. 3,000 or US\$1,000 (effective from 1 January 2008) must be made through the Peruvian banking system using the so-called "Means of Payment," which include bank deposits, wire transfers, pay orders, credit and debit cards and nonnegotiable checks. Noncompliance with this measure results in the disallowance of the corresponding expense or cost for income tax purposes. In addition, any sales tax (see Section D) related to the acquisition of goods and services is not creditable.

**Related-Party Transactions.** Expenses incurred abroad by a non-domiciled parent company, affiliates or the home office of a Peruvian subsidiary or branch (or prorated allocations of administrative expenses incurred by those entities) are deemed by law to be related to the generation of foreign revenue and, accordingly, non-deductible, unless the taxpayer can prove the contrary.

**Transfer Pricing.** Peru has introduced transfer-pricing rules, which are consistent with the Organization for Economic Cooperation and Development (OECD) guidelines. Intercompany charges must be determined at arm's length. Regardless of the relationship between the parties involved, the fair market value (FMV) must be used in various types of transactions, such as the following:

- Sales;
- Contributions of property;
- Transfers of property; and
- Performance of services.

For the sale of merchandise (inventory), the FMV is the price typically charged to third parties in profit-making transactions. For frequent transactions involving fixed assets, the FMV is the value used in such frequent transactions by other taxpayers or parties. For sporadic transactions involving fixed assets, the FMV is the appraisal value.

In the event that the transactions are performed without using the FMV, the tax authorities make the appropriate adjustments for the parties to the transaction.

The FMV of transactions between related parties is the value used by the taxpayer in identical or similar transactions with unrelated

parties. The tax authorities may apply the most appropriate of the following transfer pricing methods to reflect the economic reality of the transactions:

- Non-controlled comparable price method;
- Cost-plus method;
- Resale price method; and
- Profit-based method.

The transfer-pricing rules provide for advance price agreements between taxpayers and the Peruvian tax authorities.

Domiciled taxpayers must file an information tax return if either of the following circumstances exists:

- The total amount of the operations (revenues and expenses) with related parties is higher than S/. 200,000 (approximately US\$66,000); or
- They have entered into at least one transaction with a resident in a low-tax jurisdiction (tax haven).

Domiciled taxpayers must prepare a transfer-pricing study if either of the following circumstances exists:

- Gross revenues are higher than S/. 6,000,000 (approximately US\$2,000,000) and the total amount of operations with related parties is higher than S/. 1,000,000 (US\$330,000); or
- They have entered into at least one transaction with a resident in a low-tax jurisdiction (tax haven).

The tax authorities may request the submission of the transfer-pricing study after the end of the fiscal year.

**Debt-to-Equity Rules.** Interest on loans from related parties in excess of a 3:1 debt-to-equity ratio is not deductible.

**Transactions with Residents in Low-Tax Jurisdictions (Tax Havens).**

Expenses incurred on transactions with residents in low-tax jurisdictions (tax havens) are not deductible for tax purposes, except for the following: toll payments for the right to pass across the Panama Channel; and expenses related to credit operations, insurance or reinsurance, leasing of ships or aircrafts and freight services to and from Peru.

The following are considered low-tax jurisdictions: Alderney; Andorra; Anguila; Antigua and Barbuda; Aruba; Bahamas; Bahrain; Barbados; Belize; Bermuda; British Virgin Islands; Cayman Islands; Cook Islands; Cyprus; Dominica; Guernsey; Gibraltar; Granada; Hong Kong; Isle of Man; Jersey; Labuan; Liberia; Liechtenstein; Luxembourg; Madeira; Maldives; Marshall Islands; Monaco; Montserrat; Nauru; Netherlands Antilles; Niue; Panama; St. Kitts and Nevis; St. Vincent and the Grenadines; St. Lucia; Seychelles; Tonga; Turks and Caicos; U.S. Virgin Islands; Vanuatu; and Western Samoa.

In addition to the jurisdictions mentioned above, other jurisdictions are considered low-tax jurisdictions if the effective rate of income tax in the jurisdiction is 0% or if the effective rate that would apply to the relevant income is at least 50% less than the rate that would apply under the general income tax regime in Peru, and if one of the following additional conditions are met:

- The jurisdiction does not provide information regarding the taxation of companies in the jurisdiction;

- A tax benefit regime in the jurisdiction applies to nonresidents only;
- Beneficiaries of tax benefits in the jurisdiction may not carry out business activities in the jurisdiction; and
- The jurisdiction promotes itself as a jurisdiction that can assist companies in the reduction of their taxation in their home countries.

## F. Tax Treaties

Peru has entered into double tax treaties with Canada and Chile. It has also signed an agreement to avoid double taxation with the other members of the Andean Community (Bolivia, Colombia and Ecuador). The treaties with Canada and Chile provide for a maximum withholding tax rate of 15% for dividends, interest and royalties.

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**A. At a Glance**

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	
Real Property	6 (b)
Shares	5/10 (c)
Branch Tax Rate (%)	35 (a)(d)
Withholding Tax (%)	
Dividends	0 (e)
Interest on Peso Deposits	20 (f)(g)
Royalties from Patents, Know-how, etc.	20 (g)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (h)

- (a) Effective from 1 January 2009, the corporate income tax rate will be reduced to 30%.
- (b) See Section B.
- (c) These rates apply to capital gains on shares in domestic corporations not traded on a local stock exchange. See Section B for further details and for the rates applicable to gains derived from sales of shares traded on a local stock exchange.
- (d) Certain Philippine-source income of foreign corporations is taxed at preferential rates (see Section B).
- (e) Under domestic law, dividends paid to domestic corporations or resident foreign corporations are not subject to tax. Dividends paid to nonresident foreign corporations are generally subject to a final withholding tax of 35% (30%, effective from 1 January 2009). However, this rate may be reduced to 15% if certain conditions are met (see Section B).
- (f) The withholding tax rate for interest on peso deposits derived by domestic and resident foreign corporations is 20%. For preferential rates under tax treaties for nonresident foreign corporations, see Section F. For preferential rates on interest derived from foreign currency deposits, see Section B.
- (g) Under domestic law, if the recipient is a nonresident foreign corporation, the final withholding tax rate is 35% (30%, effective from 1 January 2009).
- (h) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Domestic corporations are taxed on their worldwide net taxable income. Domestic corporations are corporations incorporated under the laws of the Philippines. Resident foreign corporations are taxed on net taxable income derived from the Philippines, and nonresident foreign corporations are taxed on gross income derived from the Philippines. A resident foreign corporation (a branch) is one created under foreign laws and engaged in trade or business in the Philippines. Any other foreign corporation is considered a nonresident.

**Rates of Corporate Tax.** Domestic and foreign corporations are subject to tax at a rate of 35%. However, effective from 1 January 2009, the rate will be reduced to 30%.

Subject to certain exceptions, beginning with the fourth tax year following the year domestic and resident foreign corporations begin their business operations, such corporations must pay a minimum corporate income tax if this tax exceeds the tax computed under the normal tax rules. The minimum corporate income tax is 2% of gross income.

Philippine-source income of foreign corporations taxed at preferential rates includes the following.

<b>Type of Income</b>	<b>Rate (%)</b>
Interest income derived by offshore banking units (OBUs) from foreign-currency loans granted to residents	10
Income derived by OBUs authorized by Bangko Sentral ng Pilipinas (BSP; the central bank) from foreign-currency transactions with nonresidents, other OBUs and local commercial banks, including branches of foreign banks authorized by the BSP to transact business with OBUs	0
Interest income of resident foreign corporations from peso bank deposits and yields or other monetary benefits from deposit substitutes and from trust funds or similar arrangements	20
Interest income of resident foreign corporations from depository banks under the expanded foreign-currency deposit system	7.5
Income of nonresidents from transactions with OBUs and depository banks under the expanded foreign-currency deposit system	0
Royalties derived by resident foreign corporations from sources in the Philippines	20
Gross Philippine billings of international carriers doing business in the Philippines	2.5
Taxable income of regional operating headquarters of multinational companies engaged in the following: general administration and planning services; business planning and coordination; sourcing and procurement of raw materials and components; corporate finance and advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development	10
Rentals, charter fees and other fees derived by nonresident owners or lessors of vessels chartered by Philippine nationals	4.5
Rentals, charter fees and other fees derived by nonresident lessors of aircraft, machinery and other equipment	7.5
Gross income of nonresident cinematographic film owners, lessors or distributors	25
Interest on foreign loans	20

Domestic and foreign enterprises registered with the Board of Investments under the 1987 Omnibus Investments Code may be granted an income tax holiday and exemption from certain other taxes and duties. Enterprises located in special-economic zones that are registered with the Philippine Economic Zone Authority (PEZA) or the special-economic zones may be granted an income tax holiday or a special tax regime under which a 5% tax is imposed on gross income instead of all national and local taxes.

Profits remitted by a branch to its head office are subject to a 15% tax. This tax is imposed on the total profits remitted, or earmarked for remittance, without deduction of tax. The tax does not

apply to profits from activities registered with the PEZA. Dividends, interest, royalties, rent and similar income received by a foreign corporation from sources in the Philippines are not treated as branch profits unless they are effectively connected with the conduct of a trade or business in the Philippines.

**Capital Gains.** A 6% tax is imposed on capital gains presumed to have been derived from the sale, exchange or disposition of land or buildings classified as capital assets. The tax is applied to the gross selling price or the fair market value, whichever is higher.

For sales of shares of domestic corporations not traded on the stock exchange, the tax amounts to 5% of the net capital gain not exceeding P 100,000 and 10% of the gain in excess of P 100,000. If the shares are listed and traded on a local exchange, the tax is 0.5% of the gross selling price. A tax of 1%, 2% or 4% is imposed on the gross sales price of shares sold in an initial public offering.

**Administration.** A corporation may use the calendar year or a fiscal year as its tax year.

Corporations must file quarterly returns within 60 days from the close of each of the first three quarters of the tax year, and a final or adjusted return on or before the 15th day of the fourth month following the close of the tax year. The corresponding tax is paid at the time the return is filed.

**Dividends.** Dividends received by a domestic or resident foreign corporation from a domestic corporation are not subject to tax. If the recipient is a nonresident foreign corporation, the 35% tax may be reduced to 15% if the country of domicile of the recipient does not impose any tax on income derived from outside such country or if it allows a credit for taxes deemed paid in the Philippines equal to 20%, which represents the difference between the regular corporate income tax rate of 35% and the 15% preferential tax on dividends. The 15% rate also applies if the dividend is not taxed in the recipient's country of domicile. Effective from 1 January 2009, the credit against the tax will be equal to 15%, which will represent the difference between the regular corporate income tax of 30% and the 15% preferential tax on dividends.

**Foreign Tax Relief.** For domestic corporations, tax credits are allowed for income taxes paid or accrued to any foreign country, subject to certain limitations. Alternatively, such income taxes may be claimed as a deduction from taxable income. Resident foreign corporations are not allowed to credit tax paid to foreign countries against Philippine income.

### **C. Determination of Trading Income**

**General.** The computation of income for income tax purposes must be in accordance with the accounting method regularly employed in maintaining the taxpayer's books of account, provided that method clearly reflects income.

Other allowable deductions include the usual, ordinary and necessary business expenses — interest, taxes, losses, bad debts, charitable and other contributions, and contributions to a pension trust — all of which are required to be directly attributable to the development, management, operation or conduct of a trade or business in the Philippines.



The deduction for interest expense is reduced by an amount equal to 42% of interest income that has been subject to final tax. Effective from 1 January 2009, the percentage will be reduced to 33%. Companies may elect to deduct immediately interest incurred to acquire property used in a trade or business or treat such interest as a capital expenditure.

Research and development expenses that are paid or incurred during the tax year in connection with a trade or business and that are not chargeable to capital account or treated as deferred expenses may be claimed as deductible expenses.

**Inventories.** Inventory valuation must conform as nearly as possible to the best accounting practice in the trade or business and must clearly reflect income. The most commonly used methods of inventory valuation are cost and the lower of cost or market valuation.

**Tax Depreciation.** Taxpayers may deduct a reasonable allowance for exhaustion and wear and tear (including obsolescence) of property used in a trade or business. The tax authorities have not specified permissible depreciation methods or rates. The only requirement is that the method used must be generally accepted in the particular industry. Depreciation methods that are generally acceptable include the straight-line method, declining-balance method, the sum-of-the-years' digits method or any other method that may be prescribed by the Secretary of Finance. Resident foreign corporations may claim depreciation only on property located in the Philippines.

**Relief for Losses.** Net operating losses may be carried forward three years to offset future income in those years. A net operating loss is defined as the excess of allowable deductions over gross income in a tax year. Net losses may not be carried forward if the losses are incurred in a year in which a corporation is exempt from income tax or if a substantial change of ownership occurs.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax (VAT); imposed on all persons who, in the course of their trade or business, sell, barter, exchange or lease goods or properties (including intangible personal properties and real properties), render services or import goods; services rendered in the Philippines by nonresident foreign persons are deemed to be rendered in the course of trade or business; specific goods and transactions are exempt; in general, exports of goods and services are subject to a 0% rate	12%
Improperly accumulated earnings tax; levied on accumulated income of corporations if the income was accumulated to avoid tax with respect to the shareholders of the corporation or other corporations; a corporation serving as a holding company or investment company is prima facie evidence of a purpose to avoid tax	

Nature of Tax	Rate
with respect to shareholders; publicly held companies, banks and nonbank financial intermediaries, and insurance companies are exempt	10%
Fringe benefit tax; applied to the grossed-up monetary value of fringe benefits received by managerial and supervisory employees; the grossed-up monetary value is determined by dividing the monetary value of the benefit by 68%; the employer must withhold the tax and pay it to the tax authorities; the tax does not apply if the benefit is required for or is necessary to the trade or business of the employer or if the benefit is granted for the convenience of the employer; this tax is considered to be a final tax	
General rate	32%
Benefits paid to nonresident alien individuals who are not engaged in a trade or business in the Philippines (monetary value of benefit is divided by 75%)	25%
Benefits paid to certain other individuals, including aliens working for specified entities (monetary value of benefit is divided by 85%)	15%
Documentary stamp tax	
Original issue of all debt instruments; imposed on issue price	P 1 per P 200
Stock certificates, on the par value or the consideration if no par value	
Original issue	P 1 per P 200
Transfer	P 0.75 per P 200
Bills of exchange or drafts; imposed on the face value	P 0.30 per P 200
Other specified transactions and documents	Various

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Philippines has liberal foreign-exchange controls. To ensure the availability of foreign exchange for the repatriation of capital and remittance of profits, foreign investments must be registered with the Central Bank.

**Transfer Pricing.** The method used by a corporation to fix prices should be consistent worldwide.

The Philippine Bureau of Internal Revenue recently approved draft transfer-pricing regulations, which are pending with the Secretary of the Department of Finance for final review and formal issuance. The draft transfer-pricing regulations require companies to comply with various documentation requirements to justify their transfer-pricing policies for their intercompany transactions.

**Related-Party Transactions.** The tax treatment of transactions between related parties is generally the same as the treatment of transactions between unrelated parties. However, under certain conditions, a deduction may not be claimed for losses on sales or exchanges of properties or for interest incurred on transactions between related parties. The Commissioner of the Philippine

Bureau of Internal Revenue may reallocate gross income or deductions among related entities to prevent manipulation of reported income.

## F. Treaty Withholding Tax Rates

The table below lists the maximum withholding rates for dividends, interest and royalties provided under the treaties. Most of the treaties require that the recipient be the beneficial owner of the income for the preferential rates to apply.

	Dividends (v) %	Interest (w) %	Royalties %
Australia	25 (a)	15 (b)	25 (c)
Austria	25 (d)	15 (b)	15 (c)(e)
Bahrain	15 (f)	10	15 (t)
Bangladesh	15 (k)	15	15
Belgium	15 (f)	10	15
Brazil	25 (i)	15 (b)	25 (g)
Canada	25 (d)	15 (b)(h)	25 (e)(h)
China	15 (f)	10	15 (s)
Czech Republic	15 (f)	10	15 (u)
Denmark	15 (k)	10	15
Finland	15 (r)	15 (b)	25 (c)
France	15 (r)	15 (b)	15
Germany	15 (k)	15 (l)	15 (m)
Hungary	20 (k)	15	15 (e)
India	20 (o)	15 (b)	15 (p)
Indonesia	20 (k)	15 (b)	25 (c)
Israel	15 (f)	10	15 (e)
Italy	15	15 (b)	25 (c)
Japan	25 (d)	15 (b)	25 (c)
Korea	25 (k)	15 (b)	15 (c)
Malaysia	25 (i)	15	25 (c)
Netherlands	15 (f)	15 (l)	15 (c)
New Zealand	25 (i)	15 (b)	25 (c)
Norway	25 (d)	15	25 (e)(p)
Pakistan	25 (n)	15 (b)	25 (c)
Poland	15 (k)	10	15
Romania	15 (d)	15 (q)	25 (j)
Russian Federation	15	15	15
Singapore	25 (r)	15 (b)	25 (c)
Spain	15 (d)	15 (l)	15 (c)
Sweden	15 (k)	10	15
Switzerland	15 (f)	10	15
Thailand	15 (r)	15 (b)	25 (c)
United Kingdom	25 (d)	15 (b)	25 (c)
United States	25 (r)	15 (b)	25 (c)(e)
Vietnam	15 (k)	15	15
Nontreaty countries	15/35 (x)	20/35 (x)	20/35 (x)

- (a) The rate is 15% if a rebate or credit is granted to the recipient.
- (b) The rate is 10% if the interest is paid with respect to public issues of bonds, debentures or similar obligations (under the Japan treaty, with respect to bonds, debentures and government securities; under the United States treaty, with respect to public issues of bonded indebtedness). Under the Austria, Japan and Korea treaties, the 10% rate also applies to interest paid by a Board of Investments (BOI)-registered preferred pioneer enterprise. Under the India treaty, the 10% rate also applies to interest paid to financial institutions, including insurance companies.

- (c) The rate is 10% (Austria, Japan, Korea, Netherlands and Spain) or 15% (Australia, Finland, Indonesia, Italy, Malaysia, New Zealand, Pakistan, Singapore, Thailand, the United Kingdom and the United States) for royalties paid by a BOI-registered preferred enterprise (under the Austria, Japan and Korea treaties, the enterprise must be a pioneer enterprise). The 15% rate also applies to royalties paid with respect to cinematographic films or tapes for television or broadcasting under the treaties with Finland, Italy, Japan, Malaysia, Singapore, Thailand and the United Kingdom. Under the Spain treaty, the rate is 20% for such royalties. Under the Finland treaty, the rate is also 15% for royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works.
- (d) The rate is 10% (Canada, Norway, and the United Kingdom, 15%) if the recipient holds 10% (Japan and Romania, 25%) of the voting shares of the payer corporation. Under the treaties with Austria and Japan, the rate is also 10% if the payer holds 10% (Japan, 25%) of the total shares issued by the payer during the six months immediately preceding the dividend payment date. Under the Japan treaty, the rate is also 10% if the dividends are paid by a BOI-registered pioneer enterprise. Under the Romania and Spain treaties, the 10% rate does not apply to partnerships. Under the treaty with Romania, the shares must have been owned for at least two years preceding the date of the dividend payment.
- (e) This rate is subject to the "most-favored-nation" provision of the treaty.
- (f) The rate is 10% if the recipient of the dividends holds directly at least 10% of the capital of the payer. Under the treaties with Bahrain, Israel, and Switzerland, partnerships do not qualify for the 10% rate.
- (g) The 25% rate applies to royalties paid for the use of, or the right to use, trademarks, cinematographic films, or films or tapes for television or radio broadcasting. A 15% rate applies to other royalties.
- (h) This rate applies if the interest payments or royalties are taxable in Canada.
- (i) A 15% rate applies if the recipient is a company (under the Brazil treaty, a partnership also qualifies). The 25% rate applies in all other cases. Under the Malaysia treaty, the recipient must be subject to tax in Malaysia.
- (j) The rate is 15% for royalties paid with respect to cinematographic films and tapes for television or broadcasting. The rate is 10% if the payer is registered with the BOI as a preferred pioneer enterprise.
- (k) The rate is 10% (Hungary, Indonesia, 15%) if the recipient holds directly at least 25% of the capital of the payer. Under the treaties with Bangladesh, Denmark, Germany, Korea, Poland, Sweden and Vietnam, a partnership does not qualify for the 10% rate. Under the Korea treaty, the 10% rate also applies if the dividends are paid by a BOI-registered preferred pioneer enterprise.
- (l) The rate is 10% for interest paid with respect to sales on credit of industrial, commercial or scientific equipment or with respect to public issues of bonds, debentures or similar obligations. Under the Germany and Netherlands treaties, the 10% rate also applies to interest on bank loans.
- (m) This rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or broadcasting. The rate is 10% for royalties paid for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulas or processes, or industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
- (n) The rate is 15% if the recipient held 25% of the capital of the payer during the two tax years preceding the year of the dividend payment. Partnerships do not qualify for the 15% rate.
- (o) The rate is 15% if the beneficiary of the dividends owns at least 10% of the shares of the payer.
- (p) The rate is 10% (India, 15%) if the Philippine payer is registered with the BOI (under the Norway treaty, the enterprise must be a preferred pioneer enterprise). Under the Norway treaty, the rate is 7.5% for payments for the use of containers.
- (q) The rate is 10% for interest paid with respect to sales on credit of industrial, commercial or scientific machines or equipment, bank loans or public issues of bonds, debentures or similar obligations.
- (r) The 15% rate (France, 10%; United States, 20%) applies if the recipient holds at least 10% (Thailand and Singapore, 15%) of the voting shares of the payer. Under the Finland and France treaties, partnerships do not qualify for the 10% rate. Under the Singapore and United States treaties, the shares must have been owned for at least two tax years preceding the year of the dividend payment.
- (s) The 15% rate applies to royalties for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or broadcasting. A 10% rate applies to royalties paid for

the following: the use of, or the right to use, patents, trademarks, designs or models, plans, or secret formulas or processes; the use of, or the right to use, industrial, commercial, or scientific equipment; or information concerning industrial, commercial or scientific experience.

- (t) This rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or broadcasting. The rate is 10% for other royalties.
- (u) The 15% rate applies to royalties paid for the use of, or the right to use, copyrights of cinematographic films, and films or tapes for television or radio broadcasting. A 10% rate applies to royalties paid for the following: the use of, or the right to use, copyrights of literary, artistic or scientific works, with certain exceptions; the use of, or the right to use, patents, trademarks, designs or models, plans, or secret formulas or processes; the use of, or the right to use, industrial, commercial or scientific equipment; or information concerning industrial, commercial or scientific experience.
- (v) A preferential rate of 15% under the National Internal Revenue Code may apply if the recipient's country of domicile allows a credit for taxes deemed paid in the Philippines equal to 20%. This credit represents the difference between the regular corporate income tax rate of 35% and the 15% preferential rate. The 15% rate also applies if the dividend is not taxed in the recipient's country of domicile. Effective from 1 January 2009, the credit against the tax due will equal 15%, which will represent the difference between the regular corporate income tax of 30% and the 15% preferential tax on dividends.
- (w) Under Philippine domestic law, interest on foreign-currency deposits of non-residents is exempt from tax.
- (x) See Section A.

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Poland joined the European Union (EU) on 1 May 2004. This has significantly affected the Polish tax system, particularly with respect to value-added tax (VAT). It has also affected the corporate tax treatment of cross-border transactions such as dividend payments and restructurings (mergers and divisions). Poland was granted a transitional period for its implementation of the EU Directive on Interest and Royalties (see Section B). Because of the rapidly changing regulatory framework in Poland, readers should obtain updated information before engaging in transactions.

## A. At a Glance

Corporate Income Tax Rate (%)	19
Capital Gains Tax Rate (%)	19
Branch Tax Rate (%)	19
Withholding Tax (%)	
Dividends	19 (a)(b)
Interest	20 (c)(d)
Royalties	20 (c)(d)
Services	20 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This tax is imposed on dividends paid to residents and nonresidents.  
 (b) This rate may be reduced by a tax treaty, or under domestic law, if certain conditions are met.  
 (c) This rate applies only to interest and royalties transferred abroad.  
 (d) The rate of the tax may be reduced by a tax treaty.  
 (e) This withholding tax applies only to service payments made to nonresidents. In general, a foreign-service provider based in a treaty country is exempt from this tax if it submits a certificate of residency to the service recipient.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies (including companies in the process of incorporating or registering) are subject to corporate tax on their worldwide income and capital gains. Non-resident companies are taxed only on income earned in Poland. A company is resident in Poland for tax purposes if it is incorporated in Poland or managed and controlled in Poland. For this purpose, the concept of management and control is broadly equivalent to the effective management test in many treaties and is typically deemed to be exercised where the board of directors (or equivalent) meets. A branch of a nonresident company is generally taxed according to the same rules as a Polish company, but only on its Polish-source income.

Under most tax treaties, income from an overseas representative office or permanent establishment of a Polish resident company is exempt from tax. Alternatively, certain tax treaties grant a tax credit for the foreign tax imposed on the foreign-source income.

**Tax Rates.** The general corporate profits tax rate is 19%.

Under Poland's tax treaties, if the activities of a representative office include negotiating and signing agreements on behalf of its parent company, the office constitutes a permanent establishment in Poland, and consequently it is subject to corporate profits tax at the standard rate.

Withholding tax is not imposed on transfers of profits from a branch to its head office because from a legal perspective, a branch is regarded as an organizational unit of the foreign enterprise.

**Capital Gains.** Capital gains, including those derived from the sale of publicly traded shares and state bonds, are treated as part of a company's profits and are taxed at the regular corporate rate. Capital losses are deductible from normal business income.

In general, capital gains are calculated by subtracting the cost of the asset (or its net book value) and sales expenses from the sales proceeds. If the sales price differs substantially from market value, the tax office may require an independent expert valuation.

In addition, capital gains derived by nonresidents from sales and other disposals of state bonds issued on foreign markets may be effectively exempt from tax in Poland if certain conditions are satisfied.

**Administration.** The Polish tax year must last 12 consecutive months, and it is usually the calendar year. However, a company can choose a different period of 12 consecutive months as its tax year by notifying the relevant tax office. The first tax year after a change must extend for at least 12 months, but no longer than 23 months. If a company incorporated in the first half of a calendar year chooses the calendar year as its tax year, its first tax year is shorter than 12 months. A company incorporated in the second half of a calendar year may elect a period of up to 18 months for its first tax year. In the event of a merger or division of a company, the tax year may be shorter than 12 months.

In general, companies must pay monthly advances based on preliminary income statements. Monthly declarations need not be filed. However, they may elect a simplified regime. Under the simplified regime, the monthly advances are equal to one-twelfth of the tax shown in the annual tax return filed in the preceding year. If the company did not show tax liability in the annual return filed in the preceding year, it may refer to the annual tax return filed two years before the current year.

Companies must file an annual income tax return within three months after the end of the company's tax year. They must pay any balance of tax due at that time.

An overpayment declared in an annual tax return is refunded within three months. However, before the overpayment is refunded, it is credited against any past and current tax liability of the company. If the company has no tax liability, it may request that the tax office credit the overpayment against future tax liabilities or refund the overpayment in cash. Overpayments earn interest at the same rate that is charged on late payments. Under the tax code, the rate of penalty interest on unpaid taxes varies according to the fluctuation of the Lombard credit rate. The interest rate on tax arrears is 200% of the Lombard credit rate. The penalty interest rate was 12.5% on 19 October 2007.

**Dividends.** A 19% withholding tax is imposed on dividends and other profit distributions paid to residents and nonresidents. Resident recipients do not aggregate dividends received with their



taxable income subject to the regular rate. For nonresident recipients, the withholding tax is considered a final tax and, accordingly, the recipient is not subject to any further tax on the dividend received. A treaty may reduce the tax rate for distributions to nonresidents if the recipient provides the required certificate indicating that the recipient's tax residence is located in the other treaty country.

Polish companies, other European Economic Area (EEA; the EEA consists of the EU countries and Iceland, Lichtenstein and Norway) companies and Swiss companies are exempt from tax on dividends and other profit distributions received from Polish subsidiaries if they satisfy all of the following conditions:

- Their registered office or place of management is not located in Poland;
- They are subject to income tax in an EEA member state on their total income, regardless of the source of the income (for a foreign permanent establishment of an EEA company receiving profit distributions, the distributions must be subject to income tax in the state where the EEA company is established); and
- For at least two years, they hold directly at least 15% (25% for Swiss recipients) of the capital of the company paying the dividend.

Dividends received by residents from EEA entities are exempt from tax if the Polish recipient holds at least 15% of the capital of the company paying the dividend for at least two years. The same rule applies to dividends from Swiss entities, but the minimum percentage shareholding is increased to 25%.

**Interest, Royalties and Fees for Services.** Under the domestic tax law in Poland, a 20% withholding tax is imposed on interest, royalties and fees for certain services paid abroad. This withholding tax may be eliminated or reduced if the following conditions are satisfied:

- The payer can document the tax residency of the recipient of the payment or the service provider with a certificate indicating that the recipient or service provider's tax residence is in a country that has concluded a double tax treaty with Poland; and
- The relevant treaty allocates taxing rights to the country of the service provider or provides a different rate.

Under most of Poland's tax treaties, the withholding tax on fees for services may not be imposed in Poland.

Poland has been granted a transitional period for the implementation of the EU Interest and Royalties Directive (2003/49/EC). Under the transitional rules, Poland must incorporate the directive provisions into its domestic law, but it still may impose withholding tax at reduced rates. Withholding tax may be imposed at a maximum rate of 10% from 1 July 2005 through 30 June 2009 and at a maximum rate of 5% from 1 July 2009 through 30 June 2013.

**Foreign Tax Relief.** Under its tax treaties, Poland exempts foreign-source income from tax or grants a tax credit (usually with respect to dividends). Foreign taxes are creditable against Polish tax only up to the amount of Polish tax that would have been imposed on the gross foreign income.

In addition to a credit for tax on dividends (that is, a deduction of withholding tax; direct tax credit), Polish companies may also claim a credit for the tax on profits generated by their subsidiaries in other countries (indirect tax credit). A Polish company receiving a dividend from a subsidiary that is not resident in the EEA or Switzerland may deduct from its tax the amount of income tax paid by the subsidiary on that part of the profit from which the dividend was paid if the Polish parent company has held directly at least 75% of the foreign subsidiary's shares for an uninterrupted period of at least 2 years.

### C. Determination of Trading Income

**General.** Taxable income equals the difference between revenues subject to tax and tax-deductible expenses. Accounts prepared in accordance with Polish accounting standards are the basic source of information for determining taxable income. In general, companies must recognize taxable revenue when issuing an invoice.

Expenses are generally allowed as deductions if they relate to taxable revenues derived in Poland, but certain expenses, such as representation expenses, are specifically disallowed.

If taxable income cannot be determined from the accounting records, estimates may be used. Branches and permanent establishments of foreign companies are taxed on income determined on the basis of the accounting records, which must be kept in Polish currency. However, regulations provide coefficients for specific revenue categories, which may be applied if the tax base for foreign companies cannot be determined from the accounting records.

**Depreciation.** For tax purposes, depreciation calculated in accordance with the statutory rates is deductible. Depreciation is computed using the straight-line method. However, in certain circumstances, the reducing-balance method may be allowed. The following are some of the applicable annual straight-line rates.

Asset	Rate (%)
Buildings	1.5 to 10
Office equipment	14
Computers	30
Motor vehicles	20
Plant and machinery	5 to 20

For certain types of assets, depreciation rates may be doubled. Companies may apply reduced depreciation rates within specified limits.

**Relief for Losses.** Losses from one source of profits may offset income from other sources in the same tax year. Losses may be carried forward to the following five tax years to offset profits from all sources that are derived in those years. Up to 50% of the original loss may offset profits in any of the five tax years. Losses may not be carried back.

**Groups of Companies.** Groups of related companies may report combined taxable income or loss and pay one combined tax for all companies belonging to the group. To qualify as a tax group, related companies must satisfy several conditions, including the following:

- The parent company in the tax group must directly own 95% of the shares of the subsidiary companies;
- The tax group must remain in existence for at least three years;
- The taxable income of the group companies in each tax year must amount to at least 3% of the gross taxable revenues of the group companies; and
- The members of the group may not benefit from any tax exemptions with respect to corporate tax.

In practice, the applicability of the rules for tax groups is very limited, primarily as a result of the profitability requirement.

#### **D. Value-Added Tax**

Value-added tax (VAT) is imposed on goods sold and services rendered in Poland, exports, imports, and acquisitions and supplies of goods within the EU. Poland has adopted most of the EU VAT rules.

The standard rate of VAT is 22%. Lower rates of 7%, 3% and 0% apply to specified goods and services. The 0% rate also applies to exports and supplies of goods within the EU. The 3% rate applies to unprocessed foodstuffs until April 2008. Certain goods and services are exempt.

#### **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** Polish-based companies may open foreign-exchange accounts. All export proceeds received in convertible currencies and receipts from most foreign sources may be deposited in these accounts. Businesses may open foreign-currency accounts abroad. However, restrictions apply to the opening of accounts in countries that are not members of the European Union (EU) or the Organization for Economic Cooperation and Development (OECD). No permit is required for most loans obtained by Polish-based companies from abroad, including loans from foreign shareholders. Reporting requirements are imposed for certain loans and credits granted from abroad.

**Antiavoidance Legislation.** In applying the tax law, the tax authorities refer to the substance of the transaction and disregard the form (substance-over-form clause).

If under the name (legal form) of the transaction, the parties have hidden some other transaction, the tax authorities may disregard the name (legal form) used by the parties and determine the tax implications of the transaction on the basis of actual intent of the parties.

If the tax authorities have doubts about the existence or the substance of the legal relationship between the parties, they refer the case to the common court to establish the type of the actual legal relationship.

**Debt-to-Equity Rules.** Under thin-capitalization rules, if debts owed to specified related parties exceed three times the share capital of the borrower, interest paid on debts exceeding the limit is not deductible for tax purposes. For the purposes of these rules, share capital consists of paid-in capital only; it does not include debt converted into capital or contributed intangibles that are not depreciated for tax purposes (for example, goodwill under certain

circumstances). The thin-capitalization rules apply to interest on loans granted by Polish and foreign qualified entities. They cover the following loans:

- Loans granted by a shareholder that holds at least 25% of the voting rights in the borrower;
- Loans granted by shareholders that jointly hold at least 25% of the voting rights in the borrower; or
- Loans granted by one company to another company if the same shareholder or shareholders hold at least 25% of the voting rights in both the lender and the borrower.

The definition of loans covers any form of debt financing, including the issuance of bonds, and bank and nonbank deposits.

**Transfer Pricing.** The Polish tax law includes specific rules on transfer pricing. The fundamental rules, which are based on the OECD guidelines, are contained in the Corporate Profits Tax Law and the Personal Income Tax Law.

Under the Corporate Profits Tax Law, the following are related parties:

- A domestic entity (a legal or natural person having its registered office [place of management] or residence in Poland) and a foreign entity (a legal or natural person having its registered office or residence abroad), if any of the following circumstances exist:
  - The domestic entity participates, directly or indirectly, in the management, control or capital of the foreign entity;
  - The foreign entity participates, directly or indirectly, in the management, control or capital of the domestic entity; or
  - The same legal or natural persons participate, directly or indirectly, in the management, control or capital of both the domestic entity and the foreign entity.
- Two domestic entities, if the following circumstances exist:
  - The domestic entity participates, directly or indirectly, in the management, control or capital of the other domestic entity;
  - The same legal or natural persons participate, directly or indirectly, in the management, control or capital of both the domestic entity and the foreign entity; or
  - Family, capital, property or employment relations exist between the entities or the management, supervision or control personnel of the entities, or the same persons carry out management, supervision or control functions in both of the entities.

The tax law provides for the following transfer-pricing methods:

- The comparable uncontrolled price method;
- The resale-minus method; and
- The cost-plus method.

If the above methods are inapplicable, the transaction profit method may be used.

Under the law, on the request of the tax authorities, taxpayers conducting transactions with related parties exceeding certain limits (relatively low) are required to prepare specific tax documentation regarding these transactions and present it to the tax authorities or tax inspection authorities within seven days of the date of the request. The documentation must contain the following:

- A description of the functions of the parties to the transaction (including assets used and risks taken);
- All expected costs of the transaction and the method and terms of payment;
- The method for calculating profits and a description of the transaction price;
- A description of the business strategy and any other related activity if this strategy affects the transaction value;
- An indication of any other factors that were taken into account when determining the transaction value; and
- A description of the benefits that the entity required to prepare the documentation expects to obtain from transactions of an intangible nature, such as the rendering of advisory services or financial services, or the granting of licenses.

The documentation requirements also apply to entities that enter into transactions involving payments to tax havens if the total value of the transactions exceeds €20,000 during the tax year.

If the tax authorities assess additional income to a taxpayer and if a taxpayer does not provide the transfer-pricing documentation required by the law, the additional income is taxed at a penalty tax rate of 50%.

Effective from 1 January 2007, the transfer-pricing documentation requirements applicable to Polish entities also apply to PEs of foreign residents located in Poland. In addition, if income earned by the PE of a foreign resident can be assessed in Poland and if no transfer-pricing documentation is prepared, a 50% CIT rate can be applied to any excess over the fair market amount.

Taxpayers must report foreign related-party transactions if the total amount of the transactions exceeds €300,000 in a tax year. If the foreign entity has a representative office or a permanent establishment in Poland, the reporting obligation applies to single transactions exceeding €5,000.

The required information must be submitted to the tax office by the end of the third month following the end of the tax year.

On the acceptance by the Minister of Finance of the method for the determination of the price in related-party transactions, the prices are deemed to be correct.

## F. Treaty Withholding Tax Rates

The withholding tax rates for Poland's bilateral tax treaties are listed in the following table. Poland has adopted the rules in the EU Parent-Subsidiary Directive regarding the payment of dividends paid between EU companies (for further details, see Section B). The EU-Switzerland savings agreement also provides for an exemption from withholding tax.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Albania	5/10 (d)	10	5
Algeria (gg)	5/15 (d)	0/10 (k)	10
Armenia	10	5	10
Australia	15	10	10
Austria	5/15 (a)	0/5 (k)	5
Azerbaijan	10	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Bangladesh	10/15 (a)	0/10 (k)	10
Belarus	10/15 (e)	10	0
Belgium	5/15 (cc)	0/5 (k)	5
Bulgaria	10	0/10 (k)	5
Canada	15	0/15 (k)	0/10 (f)
Chile	5/15 (c)	15 (dd)	5/15 (h)(ee)
China	10	0/10 (k)	7/10 (h)
Croatia	5/15 (d)	0/10 (k)	10
Cyprus	10	0/10 (k)	5
Czech Republic	5/10 (c)	0/10 (k)	5
Denmark	0/5/15 (s)	0/5 (k)	5
Egypt	12	0/12 (k)	12
Estonia	5/15 (d)	0/10 (k)	10
Finland	5/15 (d)	0	0/10 (f)
France	5/15 (a)	0	0/10 (p)
Georgia	10	0/8 (k)	8
Germany	5/15 (a)	0/5 (k)	5
Greece	19	10	10
Hungary	10	0/10 (k)	10
Iceland	5/15 (d)	0/10 (k)	10
India	15	0/15 (k)	20 (bb)
Indonesia	10/15 (c)	0/10 (k)	15
Iran	7	0/10 (k)	10
Ireland	0/15 (d)	0/10 (k)	0/10 (v)
Israel	5/10 (b)	5	5/10 (h)
Italy	10	0/10 (k)	10
Japan	10	0/10 (k)	0/10 (i)
Jordan	10	0/10 (k)	10
Kazakhstan	10/15 (c)	0/10 (k)	10
Korea	5/10 (a)	0/10 (k)	10
Kuwait	0/5 (z)	0/5 (k)	15
Kyrgyzstan	10	0/10 (k)	10
Latvia	5/15 (d)	0/10 (k)	10
Lithuania	5/15 (d)	0/10 (k)	10
Luxembourg	5/15 (d)	0/10 (k)	10
Macedonia	5/15 (d)	0/10 (k)	10
Malaysia	0	15	15
Malta	5/15 (c)	0/10 (k)	10
Mexico	5/15 (d)	0/5/15 (k)(aa)	10
Moldova	5/15 (d)	0/10 (k)	10
Mongolia	10	0/10 (k)	5
Morocco	7/15 (d)	10	10
Netherlands	5/15 (a)	0/5 (k)	5
New Zealand	15	10	10
Nigeria (gg)	10	0/10 (k)	10
Norway	5/15 (d)	0	0/10 (f)
Pakistan	15 (j)	0/20 (k)	15/20 (n)
Philippines	10/15 (d)	0/10 (k)	15
Portugal	10/15 (o)	0/10 (k)	10
Romania	5/15 (d)	0/10 (k)	10
Russian Federation	10	0/10 (k)	10 (w)
Singapore	0/10 (r)	0/10 (k)	10
Slovak Republic	5/10 (c)	0/10 (k)	5
Slovenia	5/15 (d)	0/10 (k)	10
South Africa	5/15 (d)	0/10 (k)	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Spain	5/15 (d)	0	0/10 (f)
Sri Lanka	15	0/10 (k)	0/10 (l)
Sweden	5/15 (d)	0	5
Switzerland	5/15 (d)	10	0 (y)
Syria	10	0/10 (k)	18
Tajikistan	5/15 (d)	10	10
Thailand	19 (t)	0/10/20 (k)(m)	5/15 (f)
Tunisia	5/10 (d)	12	12
Turkey	10/15 (d)	0/10 (k)	10
Ukraine	5/15 (d)	0/10 (k)	10
United Arab Emirates	0/5 (z)	0/5 (k)	5
United Kingdom	0/10 (ff)	5	5
United States	5/15 (g)	0	10
Uruguay (gg)	15	0/15 (k)	15
Uzbekistan	5/15 (c)	0/10 (k)	10
Vietnam	10/15 (d)	10	10/15 (q)
Yugoslavia (u)	5/15 (d)	10	10
Zimbabwe	10/15 (d)	10	10
Nontreaty countries	19	20	20 (x)

- (a) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the payer.
- (b) The lower rate applies if the recipient of the dividends is a company that owns at least 15% of the payer.
- (c) The lower rate applies if the recipient of the dividends is a company that owns at least 20% of the payer.
- (d) The lower rate applies if the recipient of the dividends is a company that owns at least 25% of the payer. Under the Ireland treaty, if Ireland levies tax at source on dividends, the 0% rate is replaced by a rate of 5%.
- (e) The lower rate applies if the recipient of the dividends is a company that owns more than 30% of the payer.
- (f) The lower rate applies to royalties paid for copyrights, among other items; the higher rate applies to royalties for patents, trademarks and industrial, commercial or scientific equipment or information.
- (g) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the voting shares of the payer.
- (h) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (i) The lower rate applies to cultural royalties.
- (j) This rate applies if the recipient of the dividends is a company that owns at least one-third of the payer.
- (k) The 0% rate applies to among other items, interest paid to government units, local authorities and central banks. In the case of certain countries, the rate also applies to banks (the list of exempt or preferred recipients varies by country). The relevant treaty should be consulted in all cases.
- (l) The 0% rate applies to royalties paid for, among other items, copyrights. The 10% rate applies to royalties paid for patents, trademarks and for industrial, commercial or scientific equipment or information.
- (m) The 20% rate applies if the recipient of the interest is not a financial or insurance institution or government unit.
- (n) The lower rate applies to know-how; the higher rate applies to copyrights, patents and trademarks.
- (o) The 10% rate applies if, on the date of the payment of dividends, the recipient of the dividends has owned at least 25% of the share capital of the payer for an uninterrupted period of at least two years. The 15% rate applies to other dividends.
- (p) The lower rate applies to royalties paid for the following: copyrights; the use of or the right to use industrial, commercial and scientific equipment; services comprising scientific or technical studies; or research and advisory, supervisory or management services. The treaty should be checked in all cases.
- (q) The lower rate applies to know-how, patents and trademarks.
- (r) The lower rate applies to certain dividends paid to government units or companies.
- (s) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the payer of the dividends for at least one year and if the dividends are declared within such holding period.

The 5% rate applies to dividends paid to pension funds or other similar institutions operating in the field of pension systems. The 15% rate applies to other dividends.

- (t) Because the rate under the domestic law of Poland is 19%, the treaty rate of 20% does not apply.
- (u) The treaty with the former Federal Republic of Yugoslavia applied to the Union of Serbia and Montenegro before the division of the union in 2006. It is not clear whether the treaty will apply to the separate countries of Serbia and Montenegro after the split. It seems more likely that Serbia will be viewed as the successor country.
- (v) The lower rate applies to fees for technical services.
- (w) The 10% rate also applies to fees for technical services.
- (x) The 20% rate also applies to certain services (for example advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection services, guarantees and pledges and similar services).
- (y) The rate is 10% if Switzerland imposes a withholding tax on royalties paid to nonresidents (currently, Switzerland does not impose such a tax).
- (z) The lower rate applies if the owner of the dividends is the government or a government institution.
- (aa) The 5% rate applies to interest paid to banks and insurance companies and to interest on bonds.
- (bb) Because the rate under the domestic law in Poland is 20%, the treaty rate of 22.5% does not apply.
- (cc) The lower rate applies if the recipient of the dividends is a company that owns either of the following:
  - At least 25% of the payer; or
  - At least 10% of the payer, provided the value of the investment amounts to at least to €500,000 or its equivalent.
- (dd) The treaty rate is 15% for all types of interest. However, under a most-favored-nation clause in a protocol to the treaty, the 15% rate is replaced by any more beneficial rate agreed to by Chile in a treaty entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, a 5% rate applies to certain types of interest payments, including interest paid to banks or insurance companies or interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market.
- (ee) The general treaty rate for royalties is 15%. However, under a most-favored-nation clause in a protocol to the treaty, the 15% rate is replaced by any more beneficial rate agreed to by Chile in a treaty entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, the general withholding tax rate for royalties is 10%.
- (ff) The 0% rate applies if the beneficial owner of the dividends is a company that holds at least 10% of the share capital of the payer of the dividends for an uninterrupted period of at least two years.
- (gg) The treaty has not yet entered into force.

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The e-mail addresses for persons who are not resident in Portugal or who have e-mail addresses varying from the standard format are listed below the respective persons' names. For purposes of the e-mail addresses, accent marks are ignored.

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*At the time of writing, the 2008 Budget Law, which will contain the tax changes for 2008, had not yet been published. This document sets out the expected changes for 2008 based on the proposed Budget Law. Because the 2008 Budget Law has not yet been published, readers should obtain updated information before engaging in transactions.*

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**A. At a Glance**

Corporate Income Tax Rate (%)	
Corporate Income Tax	25 (a)
Municipal Surcharge	1.5 (b)
Branch Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (c)
Withholding Tax (%)	
Dividends	
Paid to Residents	20 (d)
Paid to Nonresidents	20 (e)
Interest	
Shareholders' Loans	
Resident Shareholders	15 (d)
Nonresident Shareholders	20 (e)
Bonds Issued by Companies	
Resident Holders	20 (d)
Nonresident Holders	20 (e)(f)(g)(h)
Government Bonds	20 (h)
Bank Deposits	
Resident Depositors	20 (d)
Nonresident Depositors	20 (e)
Royalties	
Paid to Residents	15 (d)
Paid to Nonresidents	15 (e)
Payments for Services and Commissions	
Paid to Residents	0
Paid to Nonresidents	15 (i)
Rental Income	
Paid to Residents	15 (d)
Paid to Nonresidents	15 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	6

- (a) Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas, or I.R.C.) applies to resident companies and nonresident companies with permanent establishments in Portugal. See Section B for details of other rates.
- (b) A municipal surcharge of 1.5% is generally imposed on the taxable profit determined for I.R.C. purposes. Certain municipalities do not levy the surcharge. For further details, see Section B.
- (c) See Section B.
- (d) Income must be declared and is subject to the normal tax rates. Amounts withheld may be credited against the I.R.C. due. See Section B.
- (e) These rates may be reduced by tax treaties or by European Union (EU) Directives.
- (f) Applicable to interest from private and public company bonds.
- (g) Applies to interest on bonds issued after 15 October 1994. A 25% withholding tax applies to interest on bonds issued on or before that date.
- (h) Interest on certain bonds traded on the stock exchange and paid to nonresidents not operating in Portugal through a permanent establishment may in certain circumstances be exempt from tax. The same exemption may also apply to capital gains derived from disposals of such bonds. Under a new rule, this exemption does not apply to entities that are more than 20% held, directly or indirectly, by Portuguese residents and to entities resident in tax havens. This new rule also covers central banks and other government agencies of tax havens.
- (i) This tax does not apply to communication, financial and transportation services. The tax is eliminated by most tax treaties.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporate income tax (Imposto sobre o Rendimento das Pessoas Colectivas, or I.R.C.) is levied on resident and nonresident entities.

*Resident Entities.* Companies and other entities, including non-legal entities, whose principal activity is commercial, industrial or agricultural, are subject to I.R.C. on worldwide profits, but a foreign tax credit may reduce the amount of I.R.C. payable (see *Foreign Tax Relief* below).

Companies and other entities, including nonlegal entities, that do not carry out commercial, industrial or agricultural activities, are generally subject to tax on their worldwide income (for details regarding the calculation of the taxable profit of these entities, see Section C).

*Nonresident Entities.* Companies or other entities that operate in Portugal through a permanent establishment are subject to I.R.C. on the profits attributable to the permanent establishments.

Companies or other entities without a permanent establishment in Portugal are subject to I.R.C. on income deemed to be obtained in Portugal.

For tax purposes, companies or other entities are considered to have a permanent establishment in Portugal if they have a fixed installation or a permanent representation in Portugal through which they engage in a commercial, industrial or agricultural activity. Under rules that generally conform to the Organization for Economic Cooperation and Development (OECD) model convention, a permanent establishment may arise from a building site or installation project that lasts for more than six months or from the existence of a dependent agent. Under these rules, commissionaire structures, dependent agents and services rendered in Portugal are more likely to result in a permanent establishment for I.R.C. purposes.

Double tax treaties may further limit the scope of a permanent establishment in Portugal.

**Tax Rates.** For 2008, I.R.C. is levied at the following rates.

Type of Enterprise	Rate (%)
Companies or other entities with a head office or effective management control in Portugal, whose principal activity is commercial, industrial or agricultural	25
Companies or other entities with a head office or effective management control in the autonomous region of the Azores, or with a branch, office, premises or other representation there	17.5
Companies or other entities with a head office or effective management control in the autonomous region of the Madeira, or with a branch, office, premises or other representation there	22.5
Entities other than companies with a head office or effective management control in Portugal, whose principal activity is not commercial, industrial or agricultural	20
Permanent establishments	25

Type of Enterprise	Rate (%)
Nonresident companies or other entities without a head office, effective management control or a permanent establishment in Portugal	
Standard rate	25
Rental income	15

Certain types of income earned by companies in the last category of companies listed above are subject to the following withholding taxes.

Type of Income	Rate (%)
Copyrights and royalties	15
Technical assistance	15
Income from shares	20
Income from government bonds	20
Revenues derived from the use of, or the right to use, equipment	15
Other revenues from the application of capital	20
Payments for services rendered or used in Portugal, and all types of commissions	15*

\* This tax does not apply to communications, financial and transportation services. It is eliminated under most tax treaties.

Applicable double tax treaties, EU directives or the agreement entered into between the EU and Switzerland may reduce the above withholding tax rates.

A municipal surcharge (*derrama*) is imposed on resident companies and nonresident companies with a permanent establishment in Portugal. The rate of the municipal surcharge, which may be up to 1.5%, is set by the respective municipalities. The rate is applied to the taxable profit determined for I.R.C. purposes. Consequently, the maximum combined rate of the I.R.C. and the surcharge on companies is 26.5%.

Companies established in the free zones of Madeira and the Azores may enjoy a tax holiday until the year 2011. The more important of the two, Madeira, is internationally known as the Madeira Free Zone (*Zona Franca da Madeira*). For entities licensed during the period of 2003 to 2006 to operate in the Madeira free zone, the I.R.C. tax exemption is replaced by a reduced rates system. Under this system, the rates are 1% in 2003 and 2004, 2% in 2005 and 2006, and 3% from 2007 to 2011. These rates apply to taxable income, subject to a cap, which is generally based on the existing number of jobs. New requirements and limitations apply to the issuance of licenses for the Madeira free zone, effective from 2003. A new regime, which is similar to the regime available for companies licensed between 2003 and 2006, has been approved for companies licensed between 2007 and 2013. Under the new regime, the reduced rates are 3% for 2007 through 2009, 4% for 2010 through 2012 and 5% for 2013 through 2020. The new regime will also be available after 2011 for companies licensed before 2007.

A reduced I.R.C. rate of 10% or 15% applies to activities carried out in parts of the country specified by the government.

Significant incentives are also available for qualifying new investment projects established before 31 December 2010. To qualify for the incentives, the projects must satisfy the following requirements:

- They must have a value exceeding €4,987,978.97;
- They must develop sectors considered to be of strategic importance to the Portuguese economy; and
- They must be designed to reduce regional economic imbalances, create jobs and stimulate technological innovation and scientific research in Portugal.

Qualifying projects may enjoy the following tax benefits for 10 years:

- A tax credit of 5% to 20% of amounts invested in plant, equipment and intangibles used in the project. However, buildings and furniture qualify only if they are directly connected to the development of the activity.
- An exemption from, or a reduction of, the municipal real estate holding tax for buildings used in the project.
- An exemption from, or a reduction of, the property transfer tax (see Section D) for buildings used in the project.
- An exemption from, or a reduction of, the stamp duty for acts and contracts necessary to complete the project, including finance agreements.

Small and medium-size companies held by individuals, venture capital companies and business angels (see *Capital Gains* below) can benefit for a three-year period from a notional interest deduction of 3% on the amount of cash contributions by shareholders to share capital made during the period of 2008 through 2010.

**Capital Gains.** Capital gains derived from the sale of fixed assets and from the sale of financial assets are included in taxable income subject to I.R.C. The capital gain on fixed assets is equal to the difference between the sales value and the acquisition value, adjusted by depreciation and by an official index. The tax authorities may determine the sales value for real estate to be an amount other than the amount provided in the sales contract.

Capital losses from shares and other participations are deductible for tax purposes only in certain circumstances.

Fifty percent of the capital gains derived from disposals of tangible fixed assets held for more than one year may be exempt if the sales proceeds are invested in similar assets during the period beginning one year before the date of the disposal and ending two years after the date of the disposal. A statement of the intention to reinvest the gains must be included in the annual tax return for the year of disposal. The remaining 50% of the net gains derived from the disposal is subject to tax in the year of the disposal. The above rules also apply to shares and other participations, but certain limitations apply.

If only a portion of the proceeds is reinvested, the exemption is reduced proportionally. If by the end of the second year following the disposal no reinvestment is made, the net capital gains remaining untaxed (50%) are added to taxable profit for that year, increased by 15%.

Pure holding companies (*sociedade gestora de participações sociais*, or SGPS), venture capital companies (*sociedade de capital de risco*, or SCR) and business angels (*investidores de capital de risco*, or ICR) may benefit from special rules. Under these rules, capital gains may be fully exempt, while capital losses and

interest expenses associated with the acquisition of shares and other participations are deductible for tax purposes only in certain circumstances. Tax credits may also be available for SCRs and ICRs as a result of investments made in certain types of companies.

Nonresident companies that do not have a head office, effective management control or a permanent establishment in Portugal are subject to I.R.C. on capital gains derived from the sales of corporate participations, securities and financial instruments if any of the following apply:

- More than 25% of the nonresident entities are held, directly or indirectly, by resident entities;
- The nonresident entities are resident in territories listed on a black list issued by a Ministerial Order of the Finance Minister; or
- The capital gains arise from the transfer of shares held in a property company in which more than 50% of the assets comprise Portuguese real estate or in a holding company that controls such a company.

Nonresident companies that do not have a head office, effective management control or a permanent establishment in Portugal are taxed at a 25% rate on taxable capital gains derived from disposals of real estate, and shares and other securities. For this purpose, nonresident entities must file a tax return.

*Exit Taxes.* The I.R.C. Code provides that the transfer of the legal seat and place of effective management of a Portuguese company, without the company being liquidated, results in a taxable capital gain or loss equal to the difference between the market value of the assets and the tax basis of assets as of the date of the deemed closing of the activity. This rule does not apply to assets and liabilities remaining in Portugal as part of the property of a Portuguese permanent establishment of the transferor company if certain requirements are met.

The exit tax also applies to a permanent establishment of a nonresident company on the closing of an activity in Portugal or on the transfer of the company's assets abroad.

In addition, the shareholders of a Portuguese company that transfers its seat or legal place of effective management abroad are subject to tax on the difference between the market value of the company's net assets at the time of transfer and the acquisition cost of the participation.

**Administration.** Companies with a head office, effective management control or a permanent establishment in Portugal are required to make estimated payments with respect to the current financial year. The payments are due in July, September and December. For companies with turnover of up to €498,797.90, the total of the estimated payments must equal at least 75% of the preceding year's tax. For companies with turnover exceeding €498,797.90, the total of the estimated payments must equal at least 85% of the preceding year's tax. The first payment is mandatory. However, the obligation to pay the other installments depends on the tax situation of the company. For example, a company may be excused from making the second and third installments if it

establishes by adequate evidence that it is suffering losses in the current year. However, if a company ceases making installment payments and if the balance due exceeds by 20% or more the tax due for that year under normal conditions, compensatory interest is charged. Companies must file a tax return by 31 May of the following year. Companies must pay any balance due when they file their annual tax return.

Companies with a head office, effective management control or a permanent establishment in Portugal that have adopted a financial year other than the calendar year must make estimated payments as outlined above, but in the seventh, ninth and twelfth month of their financial year. They must file a tax return by the end of the fifth month following the end of that year.

In addition, companies must make a Special Payment on Account (SPA) in the third month of the financial year, or they can elect to pay the amount in the third and tenth months. The SPA is equal to the difference between the following amounts:

- 1% of turnover of the preceding year, with a minimum limit of €1,250, or, if the minimum limit is exceeded, €1,250 plus 20% of the excess with a maximum limit of €70,000; and
- The ordinary payments on account made in the preceding year.

The SPA may be subtracted from the tax liability in the following four years, or refunded if, on the occurrence of certain events (for example, the closing of activity), a petition is filed.

A nonresident company without a permanent establishment in Portugal must appoint an individual or company, resident in Portugal, to represent it concerning any tax liabilities. The representative must sign and file the tax return using the general tax return form. I.R.C. on capital gains derived from the sale of real estate must be paid within 30 days from the date of sale. I.R.C. on rents from leasing buildings must be paid by 31 May of the following year.

**Dividends.** Dividends paid by companies to residents and nonresidents are generally subject to withholding tax at a rate of 20%.

On distributions to resident parent companies, the 20% withholding tax is treated as a payment on account of the final I.R.C. due. Only 50% of dividends on shares of companies privatized by the end of 2002 is subject to I.R.C. Consequently, the withholding tax rate levied on such dividends paid to nonresidents is 12.5% (50% x 25%).

A resident company subject to I.R.C. may deduct 100% of dividends received from another resident company if all of the following conditions apply:

- The recipient company owns directly at least 10% of the capital of the payer or the acquisition price for the shares held in the payer was at least €20 million;
- The recipient company holds the interest described above for an uninterrupted period of at least one year that includes the date of distribution of the dividends, or it makes a commitment to hold the interest until the one-year holding period is complete; and
- The payer of the dividends is a Portuguese resident company that is also subject to, and not exempt from, I.R.C. or Game Tax (tax imposed on income from gambling derived by entities such as casinos).

SCRs, SGPSs and ICRs (for details regarding these types of entities, see *Capital Gains* above) need only satisfy the second and third conditions described above to qualify for the 100% deduction for dividends received on their holdings in Portuguese resident companies.

A 100% dividends-received deduction is granted for dividends paid by entities from EU member countries to Portuguese entities (or Portuguese permanent establishments of EU entities) if the above conditions are satisfied and if both the payer and recipient of the dividends qualify under the EU Parent-Subsidiary Directive.

Dividends paid out of income not subject to effective taxation qualifies for only a 50% exemption. However, a full exemption will still be available for dividends received by SGPSs.

If a recipient qualifies for the 100% deduction, the payer of the dividends does not need to withhold tax. This requires the satisfaction of a one-year holding period requirement before distribution.

If a resident company receiving dividends from another resident company does not satisfy the conditions for the 100% deduction, it may deduct 50% of the amount of the dividend before withholding taxes.

**Foreign Tax Relief.** Foreign-source income is taxable in Portugal. However, direct foreign tax may be credited against the Portuguese tax liability up to the amount of I.R.C. attributable to the net foreign-source income.

### C. Determination of Trading Income

**General.** Taxable profit is determined according to the following rules:

- For companies with a head office or effective management control in Portugal that are principally engaged in commercial, agricultural or industrial activities, the taxable profit is the net accounting profit calculated in accordance with Portuguese generally accepted accounting principles, as adjusted by the I.R.C.
- For companies with a head office or effective management control in Portugal that do not principally engage in commercial, industrial or agricultural activities, the taxable profit is the net total of revenues from various categories of income as described in the Personal Tax (I.R.S.) Code, less expenses.
- For permanent establishments, the taxable profit is determined as outlined in the first item. In calculating taxable profit, general administrative expenses that are attributable to the permanent establishment may be deducted as a cost if justified and acceptable to the fiscal authorities.

Expenses that are considered essential for the generation or maintenance of profits are deductible. However, the following expenses are not deductible:

- The tax depreciation of private cars, on the amount of the acquisition price exceeding €29,927.87, as well as all expenses concerning pleasure boats and tourism airplanes, except for those allocated to public transportation companies or used for rental purposes as part of the company's normal activities;
- Daily allowances and compensation for costs incurred in traveling in the employees' own vehicles at the service of the employer that are not charged to clients if the company does not maintain



a control map of the expenses, allowing it to identify the place, length and purpose of the displacements, except for the amounts on which the beneficiary is subject to I.R.S;

- Expenses shown on documents issued by entities without a valid taxpayer number;
- I.R.C. and municipal surcharge (see Section B); and
- Penalties and interest charges.

Assets under financial leases are deemed to be owned by the lessee, and consequently the lessee may deduct only applicable tax depreciation and any interest included in the rent payments. Special rules apply to sale and leaseback transactions.

Although representation expenses and expenses related to private cars are deductible, they are subject to a special stand-alone tax at a rate of 5%. This rate is increased to 15% for expenses related to private cars if the acquisition price of the car exceeded €40,000 and if the company incurred tax losses in the two preceding financial years.

The 5% tax also applies to tax-deductible daily allowances and compensation for costs incurred in traveling in the employees' own vehicles at the service of the employer that is not charged to clients and not subject to I.R.S. The tax also applies if such expenses are not tax deductible as a result of the lack of proper documentation and if the taxpayer incurs a tax loss in the financial year.

Undocumented expenses are not deductible. In addition, these expenses are subject to a special stand-alone rate of 50% (70% with respect to entities partially or totally exempt from I.R.C. or not principally engaged in commercial, industrial or agricultural activities). This tax is imposed regardless of whether the company earns a taxable profit or suffers a tax loss in the year it incurs the expenses. The tax authorities may classify an expense as undocumented if insufficient supporting documentation exists.

**Inventories.** Inventories must be consistently valued by any of the following criteria:

- Effective cost of acquisition or production;
- Standard costs in accordance with adequate technical and accounting principles;
- Cost of sales less the normal profit margin; and
- Any other special valuation considered basic or normal, provided that it has the prior approval of the tax authorities.

Changes in the method of valuation must be justifiable and acceptable to the tax authorities.

**Provisions.** The following provisions are deductible:

- Bad and doubtful debts, based on a judicial claim or on an analysis of the accounts receivable;
- Inventory losses (inventory values in excess of market value); and
- Technical provisions imposed by the Bank of Portugal or the Portuguese Insurance Institute.

**Depreciation.** In general, depreciation is calculated using the straight-line method. The declining-balance method may be used for new tangible fixed assets other than buildings, office furniture and automobiles not used for public transport or rental. Maximum

depreciation rates are established by law for general purposes and for certain specific industries. If rates that are less than 50% of the official rates are used, total depreciation will not be achieved over the life of the asset. The following are the principal official straight-line rates.

Asset	Rate (%)
Commercial buildings	2
Industrial buildings	5
Office equipment	12.5 to 25
Motor vehicles	12.5 to 25
Plant and machinery	5 to 33.33

Companies may request the prior approval of the tax authorities for the use of depreciation methods other than straight-line or declining-balance or rates up to double the official rates. Approval is granted only if the request is justified by the company's business activities.

For tax purposes, the maximum depreciable cost of private motor cars is €29,927.87.

**Relief for Losses.** Tax losses may be carried forward for six years. Loss carrybacks are not allowed. Tax losses existing at the time of the occurrence of certain changes may not be carried forward. The following are the changes:

- A change in the business purpose;
- A substantial change in the company's activities from those carried on previously; or
- A change of at least 50% of the shareholders or voting rights.

**Groups of Companies.** Resident groups of companies may elect to be taxed on their consolidated profit. To qualify for tax consolidation, a group must satisfy certain conditions, including the following:

- The parent company must hold, directly or indirectly, at least 90% of the subsidiaries registered capital, provided that the holding accounts for more than 50% of the voting rights;
- The parent company may not be deemed to be dominated by other company;
- All companies belonging to the group must have their head office and place of effective management in Portugal;
- The parent company must hold the participation in the subsidiary for more than one year beginning from the date the regime begins to be applied; and
- All group companies must be subject to I.R.C. at the standard rate of 25%.

Applications for consolidated reporting must be filed with the Ministry of Finance before the end of the third month of the year for which the application is intended to take effect.

Losses of individual group companies may be offset against taxable profit within the consolidated group, in accordance with the following rules:

- Losses of individual group companies incurred in years before the consolidation can only be offset up to the amount of the taxable profit derived by the company that incurred such losses;
- Consolidated losses may be offset against consolidated profits only;

- Consolidated losses may not be offset against profits generated by companies after they leave the group; and
- The consolidated group may not deduct losses incurred by companies after they leave the group.

The consolidated taxable profit equals the sum of the group's companies taxable profits or losses, as shown in each of the respective tax returns, adjusted for dividends distributed between group companies that are included in the tax bases of the individual companies.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (IVA), levied on goods and services, other than exempt services	
General rates	
Portugal	21
Madeira and the Azores	15
Intermediate rates	
Portugal	12
Madeira and the Azores	8
Reduced rates	
Portugal	5
Madeira and the Azores	4
Social security contributions, on salaries, wages and regular bonuses but excluding meal subsidies, up to a specified amount; paid by	
Employer	21.25/23.75
Employee	10/11
Property transfer tax; payable by purchaser	
Buildings	6.5
Farm land	5
Offshore companies	8
Municipal real estate holding tax; local tax imposed annually on the assessed tax value of the property on 31 December; tax payable by the owner of the property; tax rate for urban property established by the Municipal Assembly in the location of the property	
Offshore companies	1/2
Other companies	0.2 to 0.8
Stamp duty	
Share capital increases (except cash)	0.4
Loans (maximum rate)	0.6
Interest on bank loans	4
Transfer of real estate	0.8

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Portugal does not impose foreign-exchange controls. No restrictions are imposed on inbound or outbound investments.

Both an entity that invests in Portugal and the entity in which the investment is made must notify the Portuguese Investments, Foreign Trade and Tourism Institute no later than 30 days after the date of the investment. This process is for registration purposes only.

**Mergers and Reorganizations.** Mergers and other types of corporate reorganizations may be tax-neutral in Portugal if certain conditions are met.

**Controlled Foreign Companies.** The following rules apply to controlled foreign companies (CFCs).

A Portuguese resident shareholder owning at least 25% of a CFC is subject to tax on its allocable share of the CFC's net income. However, if at least 50% of the CFC's shares are owned by Portuguese residents, the percentage described in the preceding sentence is reduced to 10%.

A company is deemed to be subject to a clearly more favorable tax regime if the company is not subject to corporate income tax or subject to tax at an effective rate of tax equal to or lower than 60% of the I.R.C. standard rate of 25% (this effective rate is currently 15%) or if its place of business is included in a black list of tax-haven territories provided in a Ministerial Order of the Finance Minister.

The income of the CFC is allocated to the first company subject to the regular I.R.C. rate. This prevents the imposition of a Madeira Free Zone company, which is exempt from tax but is considered to be resident in Portugal for tax purposes, between a CFC and a Portuguese resident company.

In general, payments made by Portuguese residents to nonresidents subject to a clearly more favorable tax regime are not deductible for tax purposes, and the payers are subject to a stand-alone tax rate of 35% (55% for entities partially or fully exempt from I.R.C. or not principally engaged in commercial, industrial or agricultural activities). However, these payments may be deducted and are not subject to stand-alone taxation if the payer establishes the following: the payments were made in real transactions; the payments are normal; and the amounts of the payments are not unreasonable.

**Related-Party Transactions.** For related-party transactions (transactions between parties with a special relationship), the tax authorities may make adjustments to taxable profit that are necessary to reflect transactions on an arm's length basis. The I.R.C. Code contains transfer-pricing rules, which are applied on the basis of the Organization for Economic Cooperation and Development (OECD) guidelines. In addition, recent legislation had provided details regarding these rules.

A special relationship is deemed to exist if one entity has the capacity, directly or indirectly, to influence in a decisive manner the management decisions of another entity. This capacity is deemed to exist in the following relationships:

- Between one entity and its shareholders, or their spouses, ascendants or descendants, if they possess, directly or indirectly, 10% of the capital or voting rights of the entity;
- Between one entity and the members of its board, administration, management or fiscal bodies, as well as the members' spouses, ascendants and descendants;
- Between any entities bound by group relations;
- Between any entities bound by dominance relations;

- Between one entity and the other if the first entity's business activities depend on the other entity as a result of a commercial, financial, professional or legal relationship; and
- Between a resident entity and an entity located in a blacklisted territory.

The I.R.C. Code now provides for Advanced Pricing Agreements.

**Debt-to-Equity Rules.** The I.R.C. Code includes thin-capitalization rules, which apply to interest paid by a Portuguese company to companies resident outside the EU if the payer has excessive indebtedness and if a special relationship exists between the debtor and the creditor. The thin-capitalization rules disallow tax deductions for interest paid on the excess debt, but they do not reclassify the interest as a dividend distribution.

In general, debt is considered excessive when the debt-to-equity ratio exceeds 2:1. However, if a company can demonstrate that its level of debt is normal for its type of activity, economic sector, size or another aspect of its operations, a higher ratio may be allowed for tax purposes.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Algeria	10/15 (d)	15	10
Austria	15 (b)	10	5/10 (a)
Belgium	15 (b)	15	10
Brazil	10/15 (d)	15	15
Bulgaria	10/15 (d)	10	10
Canada	10/15 (d)	10	10
Cape Verde	10	10	10
China	10	10	10
Cuba	5/10 (j)	10	5
Czech Republic	10/15 (b)(d)	10	10
Denmark	10 (b)	10	10
Estonia	10 (b)	10	10
Finland	10/15 (b)(c)	15	10
France	15 (b)	10/12 (g)	5
Germany	15 (b)	10/15 (e)	10
Greece	15 (b)	15	10
Hungary	10/15 (b)(d)	10	10
Iceland	10/15 (d)	10	10
India	10/15 (d)	10	10
Ireland	15 (b)	15	10
Italy	15 (b)	15	12
Korea (South)	10/15 (d)	15	10
Latvia	10 (b)	10	10
Lithuania	10 (b)	10	10
Luxembourg	15 (b)	10/15 (h)	10
Macau	10	10	10
Malta	10/15 (b)(d)	10	10
Mexico	10	10	10
Morocco	10/15 (d)	12	10
Mozambique	15	10	10
Netherlands	10 (b)	10	10
Norway	10/15 (c)	15	10
Poland	10/15 (b)(d)	10	10
Romania	10/15 (d)	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Russian Federation	10/15 (d)	10	10
Singapore	10	10	10
Slovak Republic	10/15 (b)(d)	10	10
Slovenia	5/15 (b)(j)	10	5
Spain	10/15 (b)(c)	15	5
Sweden	10 (b)	10	10
Switzerland	10/15 (c)	10	5
Tunisia	15	15	10
Turkey	5/15 (j)	10/15 (k)	10
Ukraine	10/15 (d)	10	10
United Kingdom	10/15 (b)(c)	10	5
United States	5/15 (i)	10	10
Venezuela	10	10	10/12 (f)
Nontreaty countries (l)	20 (b)	20/25	15

- (a) The 10% rate applies if the recipient holds directly more than 50% of the capital of the payer. For other royalties, the rate is 5%.
- (b) See Section B for details regarding a 0% rate for distributions to parent companies in EU member states.
- (c) The 10% rate applies if the recipient holds directly at least 25% of the capital of the payer. The 15% rate applies to other dividends.
- (d) The 10% rate applies if, at the date of payment of the dividend, the recipient has owned directly at least 25% of the payer for an uninterrupted period of at least two years. The 15% rate applies to other dividends.
- (e) The 10% rate applies to interest on loans considered to be of economic or social interest by the Portuguese government. The 15% rate applies to other interest.
- (f) The rate is 10% for technical assistance fees.
- (g) The 10% rate applies to interest on bonds issued in France after 1965. The 12% rate applies to other interest payments.
- (h) The 10% rate applies to interest paid by an enterprise of a contracting state if a financial establishment resident in the other contracting state may deduct such interest. The 15% rate applies to other interest payments.
- (i) If the beneficial owner of the dividends is a company that owns 25% or more of the capital of the payer, and if, at the date of the distribution of the dividends, the participation has been held for at least two years, the withholding tax rate is 5%. For other dividends, the rate is 15%.
- (j) The 5% rate applies if the recipient holds directly at least 25% of the capital of the payer. The higher rate applies to other dividends.
- (k) The 10% rate applies to interest on loans with a duration of more than two years. The 15% rate applies in all other cases.
- (l) See Sections A and B for details.

Portugal has also signed double tax treaties with Chile, Indonesia and Pakistan, but these treaties are not yet in force.

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**A. At a Glance**

Corporate Income Tax Rate (%)	39 (a)
Capital Gains Tax Rate (%)	20
Branch Income Tax Rate (%)	39 (a)
Withholding Tax (%)	
Dividends	10
Interest	0 (b)
Royalties	2 to 29
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	7

(a) This is the maximum rate. An alternative minimum tax, which is imposed at a rate of 22%, may apply instead of the regular tax.

(b) A 29% withholding tax is imposed on interest paid to foreign corporations on related-party loans.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies organized in Puerto Rico are subject to Puerto Rican tax on worldwide income. Foreign companies engaged in trade or business in Puerto Rico are taxable on income earned in Puerto Rico or effectively connected with the Puerto Rican operation. Partnerships are taxed in basically the same manner as corporations. However, special partnerships, which engage only in specified activities, are not taxed at the partnership level.

**Rates of Corporate Income Tax.** The corporate income tax rates range from 20% to 39%. The combined tax is approximately \$96,750 on the first \$300,000 and 39% on the excess.

Certain companies currently doing business in Puerto Rico are operating under the benefits of industrial tax exemption under various industrial incentives acts enacted by the government in 1963, 1978, 1987 and 1998. Under these acts, the period of tax exemption (10 to 25 years) is determined based on the degree of industrialization of the area or zone where the business is located. Under the 1963, 1978 and 1987 acts, businesses qualifying for industrial tax exemption are exempt from income taxes and property taxes at a rate of 90% and from municipal license taxes at a rate of 60% during the entire period of tax exemption. In addition, these corporations are not subject to alternative minimum tax (see *Alternative Minimum Tax* below) on their industrial development income (IDI), and they benefit from favorable withholding tax rates on profit remittances. Activities qualifying for exemption

under the various tax incentives acts include manufacturing, tourism, agriculture and export of services.

The Puerto Rico Tax Incentives Act of 1998 (the 1998 Act), which is scheduled to expire on 31 December 2007, applies to the following:

- Eligible businesses engaged in the manufacturing or production of articles in Puerto Rico;
- Entities that intend to perform on a commercial scale in Puerto Rico services destined for foreign markets; and
- Entities engaged in the development and operation of ports and transshipment facilities, including supporting service businesses.

The 1998 Act provides for a flat tax rate ranging from 2% to 7% on IDI derived by companies that obtain exemption grants. For companies with pioneer status, the tax rate can be as low as 0%. In addition, the 1998 Act provides a 100% tax exemption for IDI derived from certain municipalities with high unemployment. It eliminates the tollgate tax on the repatriation of income. The 1998 Act provides that the rate of the withholding tax on royalties ranges from 2% to 15%. It grants certain special deductions and credits for the following: production payroll; expenses for training and development of personnel; research and development; net operating losses; investment in buildings, structures, machinery and equipment; and purchases of locally manufactured products.

Other Puerto Rican legislation grants tax exemptions to enterprises engaged in specified economic activities. For example, under the Puerto Rico Tourist Development Act of 1993, as amended, qualified tourist activities may enjoy exemption from income tax (90% to 100%), municipal license tax (90% to 100%), excise tax (100%) and real and personal property taxes (90%). In addition, under the Agricultural Tax Incentives Act of 1995, as amended, bona fide farmers may enjoy exemption from income tax (90%), municipal license tax (100%), excise tax (100%) and real and personal property taxes (100%).

**Alternative Minimum Tax.** The alternative minimum tax (AMT) is designed to prevent corporations with substantial economic income from using preferential deductions, exclusions and credits to substantially reduce or eliminate their tax liability. The rate of AMT is 22% and applies to the extent the AMT exceeds the regular tax liability.

Alternative minimum taxable income is determined by adding back certain tax preferential deductions to the taxable income computed for regular income tax purposes. In addition, 50% of adjusted financial statement income in excess of adjusted taxable income is included in determining the amount subject to tax.

Any AMT paid may be recovered in subsequent years as a credit to the regular tax when the regular tax is in excess of that year's AMT.

**Capital Gains.** Long-term capital gains for investment and other business assets held over six months are taxed at a maximum rate of 20%.

Business assets that are not part of inventory are generally accorded capital gain treatment in the case of a gain and ordinary loss treatment in the case of a loss.



Capital losses can be carried forward for five years to offset capital gains.

**Administration.** Corporate tax returns are due on the fifteenth day of the fourth month after the close of the taxable year. Extensions are available for up to 90 days; the tax, however, must be fully paid by the original due date. Estimated tax payments, generally totaling 90% of the final liability or 100% of the preceding year's tax, are required on a quarterly basis.

**Dividends.** Corporations engaged in a trade or business in Puerto Rico may deduct 85% of the dividends they receive from domestic (Puerto Rican) corporations, subject to limitations. Dividends received by domestic corporations or partnerships from controlled domestic corporations or partnerships are 100% deductible.

Dividends paid to nonresident corporations are subject to a 10% withholding tax.

**Foreign Tax Relief.** A tax credit is allowed for foreign taxes incurred, but is limited to the equivalent Puerto Rican tax on the foreign-source portion of taxable income. A foreign tax credit is also allowable under the AMT system.

### **C. Determination of Trading Income**

**General.** Income for tax purposes is computed in accordance with generally accepted accounting principles, as adjusted for certain statutory provisions. Consequently, taxable income frequently does not equal income for financial reporting purposes.

Interest income derived from certain instruments issued by the governments of the United States or Puerto Rico is exempt from tax. Expenses related to the generation of this type of income are not deductible.

For expenses to be deductible, they must be incurred wholly and exclusively for the production of income. Statutory provisions limit the amounts of certain deductible expenses. Only 50% of travel and entertainment expenses is deductible. Deductions for charitable contributions may not exceed 5% of taxable income before deduction of charitable contributions.

**Inventories.** Inventory is valued for tax purposes at either cost or the lower of cost or market value. In determining the cost of goods sold, the two most commonly used methods are first-in, first-out (FIFO) and last-in, first-out (LIFO). The method chosen must be applied consistently, except that an election to change from FIFO to LIFO may be made without prior permission.

**Tax Depreciation.** A depreciation deduction is available for most property (except land) used in a trade or business. The time period over which an asset is depreciated generally depends on its useful life. The following three depreciation methods are allowed in Puerto Rico: straight-line; a method similar to the U.S. ACRS method; and flexible depreciation. Deductions for ACRS depreciation are allowed only for assets acquired in tax years beginning on or after 1 July 1995. Deductions for flexible depreciation are allowed only for assets acquired in tax years beginning before 1 July 1995. The flexible method is limited to the following types of businesses: construction; agriculture; selling or leasing of build-

ings; manufacturing; tourism; and shipping. Businesses enjoying tax exemption (see Section B) may not use the flexible depreciation method. The amount of the flexible depreciation deduction is limited to a percentage of taxable income.

In general, the maximum depreciable cost for an automobile is \$25,000, which may be depreciated over a useful life of three to five years.

Depreciation computed under the straight-line depreciation method is not recaptured on the sale of an asset, but depreciation computed under the flexible depreciation and ACRS methods is subject to recapture.

**Groups of Companies.** Affiliated corporations doing business in Puerto Rico may not elect to file a single income tax return on a consolidated basis.

**D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Sales and use tax; imposed on tangible personal property, taxable services, admission rights and mixed transactions; specific exemptions and exclusions are provided	5.5
Municipal sales and use tax; imposed by municipalities on taxable items; specific exemptions and exclusions are provided	1.5
Excise taxes on specified items, such as imports of cigarettes, gasoline and other fuels, vehicles and alcoholic beverages	Various
Payroll taxes	
Federal unemployment insurance (FUTA), imposed on first \$7,000 of wages (a credit of 5.4% is given for Puerto Rican unemployment tax; the overall rate can be less than 6.2%)	6.2
Workmen's compensation insurance, varies depending on nature of employee's activities	Various
Social security contributions; subject to the same limitations as in the United States; imposed on	
Wages up to \$102,000; paid by	
Employer	7.65
Employee	7.65
Wages in excess of \$102,000; paid by	
Employer	1.45
Employee	1.45
Municipal license tax, on gross sales volume (if volume exceeds \$1 million, a financial statement audited by a certified public accountant licensed in Puerto Rico must accompany the business volume declaration); rate varies by municipality; payable by	
Financial institutions	0.5 to 1.5
Other businesses	0.2 to 0.5

Nature of Tax	Rate (%)
Property taxes (if volume exceeds \$1 million, a financial statement audited by a Puerto Rican certified public accountant must accompany the return); rate varies by municipality	
Personal property	5.08 to 8.23
Real property	8.08 to 10.23

## E. Miscellaneous Matters

**Audited Financial Statements.** Entities engaged in a trade or business in Puerto Rico that have a volume of business in excess of \$1 million (\$500,000 for special partnerships; see Section B) are required to submit, with their income, property and volume of business declaration tax returns, audited financial statements certified by a CPA licensed to practice in Puerto Rico. In addition, an audited balance sheet with relevant footnotes is required to be attached to the annual report filed with the Secretary of State in the case of a Puerto Rican corporation with a volume of business in excess of \$1 million.

For non-Puerto Rican corporations, an audited balance sheet with relevant footnotes, certified by a CPA licensed to practice in Puerto Rico, is required to accompany the annual report filed with the Secretary of State regardless of the non-Puerto Rican corporation's volume of business.

If foreign corporations do not keep available books of account and supporting documents in Puerto Rico, all of their tax deductions may be denied. The use of audited financial statements showing separate Puerto Rican operations or subsidiaries in a supplementary section does not satisfy this requirement. A foreign corporation is deemed to be in compliance with this requirement if it can physically produce its books and records in Puerto Rico within 30 days. An extension of 15 days may be granted.

**Foreign-Exchange Controls.** Puerto Rico does not impose foreign-exchange controls, but large currency transfers must be reported to the U.S. Treasury Department.

**Debt-to-Equity Rules.** Puerto Rican law does not include any specific thin-capitalization provisions, but U.S. provisions in this area may be persuasive.

**Transfer Pricing.** Under the income tax law, the tax authorities may redistribute or reallocate income, deductions, credits and other items between related taxpayers to prevent tax evasion. The law does not prescribe transfer-pricing methods. However, regulations identify methods that may be used by the Secretary of Treasury to determine the actual net income derived from sales of tangible property between related taxpayers. In addition, these regulations provide guidance on other types of transactions between related taxpayers, such as intercompany loans, rendering of services and transfers of intangible property.

## F. Tax Treaties

Puerto Rico does not participate in U.S. income tax treaties and has not entered into any treaties with other countries.

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*A new income tax law is expected to be enacted in Qatar in 2008. The law has been referred to the Advisory Council for consideration and it is likely that the cabinet will enact the new law during the first or second quarter of 2008. It is expected that the new law will provide for a standard income tax rate of 12%, which will replace the existing progressive income tax rates that include a maximum rate of 35%. In addition, the new law will include more comprehensive guidance on the definition of allowable costs and expenses, loss relief, transfer pricing and thin capitalization. A system of withholding taxes on passive income is also expected to be introduced. Because of the expected enactment of the new income tax law, readers should obtain updated information before engaging in transactions.*

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## A. At a Glance

Corporate Income Tax Rate (%)	35*
Capital Gains Tax Rate (%)	35*
Branch Tax Rate (%)	35*
Withholding Tax (%)	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

\* This is the maximum rate (see Section B).

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Foreign companies, including partnerships and joint ventures, carrying on business activities in Qatar are subject to tax. Tax is imposed on a foreign entity operating in Qatar, regardless of whether it operates through a branch or in a joint

venture with a locally registered company. For a company with Qatari and foreign shareholders, tax is assessed on the total profits of the company. The resulting tax liability is apportioned between the foreign and Qatari shareholders. The foreign shareholders must pay their share of the tax liability to the tax authorities, but the Qatari shareholders are exempt from tax. Citizens of other Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Saudi Arabia and United Arab Emirates) are treated as Qatari citizens for the purposes of the tax law. Consequently, foreign companies wholly owned by Qataris and other GCC nationals are exempt from tax.

**Rates of Corporate Income Tax.** Income is subject to tax at the following progressive rates.

Taxable Income		Rate (%)
Exceeding (QR)	Not Exceeding (QR)	
0	100,000	0
100,000	500,000	10
500,000	1,000,000	15
1,000,000	1,500,000	20
1,500,000	2,500,000	25
2,500,000	5,000,000	30
5,000,000	—	35

**Tax Incentives.** Tax exemptions may be granted for certain projects, regardless of whether they are performed by Qataris or foreigners. A committee evaluates applications for tax exemptions. It considers the following factors in reviewing the applications:

- Whether the project provides social or economic benefits to Qatar;
- Whether the project falls within the planned development and economic objectives of the government and has the approval of the appropriate government department;
- Whether the project contributes to the national economy;
- Whether the project uses modern technology; and
- Whether the project creates employment opportunities for citizens.

The principal contractor involved in an exempt project applies for exemption from tax. The exemption normally does not flow through to the subcontractors unless the wording of the project exemption specifically addresses exemption for the subcontractors.

The income of businesses operating at the Qatar Financial Centre (QFC) will be subject to a standard rate of tax of 10%, effective from 1 May 2008. Activities that may be carried on at the QFC include the following: international banking; insurance and reinsurance; fund management; brokerage and dealer operations; treasury management; funds administration and pension funds; financial advice and back office operations; professional services in the areas of classification and investment grading; audit, legal and taxation advisory; holding company and headquarter hosting; and ship brokering and agency services. Companies engaged in captive insurance or reinsurance services, operating collective-investment schemes or establishing special-purpose entities at the QFC are exempt from tax.

The income of businesses operating at the Qatar Science and Technology Park (QSTP) are exempt from tax. Activities that may be carried out at the QSTP include the following: research

and development of new products; technology development and development of new processes; low volume, high value added specialist manufacturing; technology-related consulting services, technology training and promotion of academic developments in the technology fields; and incubating new businesses with advanced learning.

**Capital Gains.** Capital gains are aggregated with other income and are subject to tax at the regular corporate income tax rates.

**Administration.** The tax year runs from 1 January to 31 December, and a taxpayer must use this accounting period unless approval is obtained for some other year-end. Approval to use an alternative accounting period is granted in exceptional cases only.

Tax declarations must be filed within four months after the end of the accounting period. The due date may be extended at the discretion of the tax administration, but the length of the extension may not exceed eight months.

The tax declaration must be certified by an accountant in practice in Qatar who is registered with the Ministry of Finance. If this requirement is not satisfied, the tax administration rejects the tax declaration. The tax declaration and supporting audited financial statements must be denominated in Qatari riyals.

Tax is payable on the due date for filing the tax declaration. The due date for payment of taxes may be extended if the filing date is extended and if the taxpayer provides reasons acceptable to the tax administration. Alternatively, the tax administration may allow taxes to be paid in installments during the extension period. Tax is payable in Qatari riyals.

Penalties for late filing or late payment of taxes are levied at the rate of QR 10,000 a month or 2% of tax due, whichever is greater.

The tax administration may issue tax assessments based on deemed profit in certain circumstances (see Section C). The tax law provides for a structured appeals process against such tax assessments. The appeals procedure consists of three stages — correspondence and negotiations with the tax administration; formal appeal to an Appeal Committee; and the commencement of a case in the judicial courts. In practice, virtually all assessments are agreed to at the correspondence and negotiation stage.

The tax administration may inspect a taxpayer's books and records, which should be maintained in Qatar. The books and records are not required to be maintained in Arabic. The accounting books and records must be maintained for at least five years from the date the annual tax declaration is filed with the tax administration.

**Dividends.** Dividends are not taxed. Tax is assessed on the share of profits allocable to foreign shareholders according to the financial statements of a company, as adjusted for tax purposes.

**Foreign Tax Relief.** Foreign tax relief is available under the tax treaties with the countries listed in Section E.

### **C. Determination of Trading Income**

**General.** The following are some of the items included in taxable income:

- Profits derived from any project performed in Qatar;
- Commissions paid for activities as an agent in Qatar, regardless of whether the commission is paid in or outside Qatar;
- Fees paid for consultancy and related services performed in Qatar;
- Proceeds from the sale or license of concessions, trademarks, designs, know-how or copyrights;
- Rent for property located in Qatar; and
- Amounts received for debts that were previously written off.

Normal business expenses are allowable and must be determined under the accrual method of accounting. Agency fees paid to a Qatari agent are deductible if they are supported by a valid agreement and if they do not exceed 5% of the reported contract revenue for the year. Branches are limited in the deduction of head office expenses (see *Head Office Overhead* below).

The tax administration may issue an assessment based on deemed profit if one of the following applies:

- The tax administration determines that the declaration submitted by the taxpayer is not correct;
- The taxpayer fails to submit a declaration;
- The taxpayer does not maintain proper books and records; or
- The taxpayer does not provide information requested by the tax administration.

**Inventories.** Inventories may be valued using any internationally accepted method normally applied in the relevant industry.

**Provisions.** General provisions, such as bad debts and stock obsolescence, are not allowed. Specific bad debts that are written off are deductible to the extent they satisfy conditions set by the tax administration. Deductions by banks for loan loss provisions are the subject of periodic instructions from the Central Bank of Qatar.

**Head Office Overhead.** Charges of a general or administrative nature imposed by a head office on its Qatar branch are allowed as deductions, provided they do not exceed 3% of turnover less subcontract costs. For banks, the limit is 1%. If a project derives income from both Qatari and foreign sources, the limit is 3% of the total revenues of the project, less subcontract costs, revenues from the supply of machinery and equipment overseas, revenues derived from services performed overseas and other income not related to activities in Qatar.

**Tax Depreciation.** Depreciation is calculated using the straight-line method. The following are the annual rates of depreciation allowed by the income tax department.

Asset	Rate (%)
Buildings such as offices, houses, warehouses, hospitals and clubs	5
Roads and bridges inside a project	5
Storage tanks, pipelines and related facilities	5
Furniture and office fittings	15
Plant, machinery and mechanical devices for which no depreciation rate is specified	15
Automobiles and motorcycles	20
Lorries	20
Ships	7.5

Asset	Rate (%)
Airplanes	25
Drilling instruments	15
General service machinery (including fixed tooling and workshop machinery)	15
Buildings and roads of service stations	5
Machinery for servicing and lubricating service machinery	15
Trailers and carts	15
Refinery machines, pipelines inside a refinery and small tanks	10
Air conditioners	20
Electrical equipment	20
Computer equipment	33.33

Purchased intangible assets may be depreciated using the straight-line method over the estimated duration of the company.

Approval of the Minister of Finance is required to depart from the tax depreciation rates noted above. Departures from these rates are normally allowed only for new start-up projects if the project owner requests permission to adopt different depreciation rates based on the presentation of appropriate justifications to the Minister.

**Relief for Losses.** Losses may be carried forward for up to three years. Carryback of losses is not allowed.

**Groups of Companies.** There are no tax regulations covering groups of companies; however, in practice, the tax authorities require a taxpayer to aggregate income from all Qatari sources.

#### D. Miscellaneous Matters

**Foreign-Exchange Controls.** Qatar does not impose foreign-exchange controls. Equity capital, loan capital, interest, dividends, branch profits, royalties and management fees are freely remittable.

**Transfer Pricing.** The tax regulations do not include provisions relating to transfer pricing. In practice, international market prices are considered the appropriate standard for transactions between related parties. The tax administration may require a taxpayer to justify charges between related parties that differ from prices determined at arm's length.

**Supply and Installation Contracts.** Profits from "supply only" operations in Qatar are exempt from tax because the supplier trades "with" but not "in" Qatar. The tax administration requires that a taxpayer engaged in both supply and installation contracts must report and account for income derived from both types of activities in the annual tax declaration. The supply value of the imported materials may be deducted from the total revenues reported in the tax declaration. The amount of this deduction must be supported by customs documents.

**Withholding of Final Payments.** All ministries, government departments, and public and semipublic establishments are required to withhold final payments due to foreign entities until such entities present a tax clearance from the tax administration. In addition, the following rules must be followed:



- Establishments, authorities and companies carrying on a trade or business in Qatar are required to give the tax administration details of the companies with which they are doing business as contractors, subcontractors or in any other form. Information to be provided includes the name and address of the company together with the value of the contract.
- The final payment due to the contractor or subcontractor must be withheld until the contractor or subcontractor presents a certificate from the tax administration confirming that all tax liabilities have been settled.
- The final payment withheld by the principal contractor pending receipt of a tax clearance certificate must be at least 5% of the contract value. Payments withheld from taxpayers engaged in long-term activities may be released based on the annual assessment notice (Form No. 5) issued by the tax department.
- The principal contractor must submit the tax clearance certificates furnished by subcontractors as support for its final tax declaration. The tax law does not specify the consequences for a failure to submit certificates. However, the tax administration has implied in directives that it will disallow subcontractor costs that are unsupported by the appropriate certificates.

## E. Tax Treaties

Qatar has entered into double tax treaties with Belgium, France, India, Italy, Korea, Pakistan, the Russian Federation and Singapore. Qatar has initialed double tax treaties with Algeria, Armenia, China, Cyprus, Egypt, Senegal, Tunisia, Turkey and the United Kingdom, but these treaties have not yet been ratified.

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## ROMANIA

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*This chapter reflects the measures in the Romanian Fiscal Code, which took effect on 1 January 2004, and subsequent amendments to the code, including amendments that are effective from 1 January 2008. Because of these recent changes, readers should obtain further information before engaging in transactions.*

## A. At a Glance

Corporate Income Tax Rate (%)	16 (a)
Capital Gains Tax Rate (%)	16 (a)
Branch Tax Rate (%)	16 (a)
Withholding Tax (%) (b)	
Dividends	16 (c)
Interest	16 (d)(e)(f)
Royalties	16 (d)(f)
Commissions	16 (d)
Management and Consultancy Services	16 (d)
Services Rendered in Romania	16 (d)
Gambling	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) See Section B.

(b) These withholding taxes are final.

(c) Effective from 1 January 2007, dividends paid by a Romanian legal entity to a legal entity resident in an EU member state or to a permanent establishment of an entity from another EU member state that is located in another EU member state are exempt from withholding tax if the beneficiary of the dividends owned at least 15% of the participation titles (for example, shares) in the Romanian legal entity for an uninterrupted period of at least two years that ended on the date of payment of the dividend. The minimum shareholding requirement will be reduced to 10%, effective from 2009.

(d) This withholding tax applies only if the income is not attributable to a permanent establishment in Romania.

(e) The following types of interest derived by nonresidents are not subject to withholding tax: interest on current deposits or accounts; interest from external instruments and credits and receivable titles representing external credits, which are contracted directly or through the issuance of titles or bonds; interest related to the issuance of state bonds on the domestic and foreign capital markets if such instruments or titles are issued or guaranteed by the Romanian government, local councils, the National Bank of Romania or banks that act in the capacity of an agent of the Romanian government; and interest on debt instruments or titles issued by Romanian companies, if the debt instruments or titles are traded on a securities market regulated by the relevant authority in the state where such market is located and if the interest is paid to a person that is not a related party with respect to the issuer of the debt instruments or titles.

(f) The rate is 10% for interest and royalties if the beneficial owner is a legal person resident in an EU member state or a permanent establishment of an entity from another EU member state that is located in another EU member state and if the beneficial owner of interest or royalties holds at least 25% of the value or number of participation titles in the Romanian entity for an uninterrupted period of at least two years that ends on the payment date of the interest or royalties. The 10% rate applies during the transition period beginning with the date of Romania's accession to the EU (1 January 2007) and ending on 31 December 2010.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident entities are subject to tax on their worldwide income. An entity is resident in Romania if it is incorporated in Romania or if its place of effective management and control is located in Romania.

Associations or consortia, which are not considered separate legal persons in Romania, are tax transparent. For such associations between Romanian legal entities and individuals or foreign entities, the tax is calculated and paid by the Romanian legal entities on behalf of the partners.

Nonresident companies that do not have an effective place of management in Romania are subject to tax on their Romanian-source income only, including capital gains derived from specified transactions (see *Capital Gains* below).

**Rates of Corporate Income Tax.** The standard rate of income tax for Romanian companies is 16%, regardless of whether the companies have foreign participation. Income derived by companies from night bars, nightclubs, discos and casinos directly or in association is also normally taxable at a rate of 16%, but the amount of the tax payable may not be less than 5% of the gross income derived from such activities.

Nonresident companies that do not have an effective place of management in Romania are taxed in Romania at the standard rate of 16% on earnings derived from their operations in Romania through branches, permanent establishments or consortia entered into with Romanian partners. A permanent establishment of a foreign company in Romania may be constituted in certain forms, including the following: an office; a branch; an agency; a factory; a mine; a place of extraction for gas or oil; and a building site that exists for a period exceeding six months. Foreign companies are also normally taxable in Romania at the standard profits tax rate on profits derived in Romania from real estate located in Romania and the exploitation of natural resources, as well as on certain capital gains (see *Capital Gains* below).

Representative offices are subject to an annual tax equal to the equivalent in Romanian lei of €4,000, payable in two installments.

**Tax Incentives.** Romania offers certain tax incentives, which are summarized below.

*Profits Tax.* The Fiscal Code contains measures allowing companies to claim accelerated depreciation.

The Fiscal Code allows “sponsorship” expenses to be claimed as a credit against profits tax due, subject to certain limitations. Under the Sponsorship Law, “sponsorship” is defined as “the juridical deed by which two persons agree upon the transfer of the ownership right upon certain material goods or financial means, in order to support the activity without lucrative scope, carried out by one of them...” The tax credit for sponsorship expenses is limited to the lower of the following:

- 0.3% of the company’s turnover; and
- 20% of the profits tax due.

*Small and Medium-Sized Enterprises.* Small and medium-sized enterprises (SMEs) may receive funds up to the profits tax on profits reinvested in equipment if specified requirements are met. To qualify as an SME, a company must satisfy the following conditions:

- Annual average personnel of less than 250 employees; and

- Annual turnover of less than €50 million or total assets of less than €43 million, according to the latest approved financial statements.

*Companies in Disfavored Economic Zones.* Certain incentives are available to companies and their employees engaged in activities in disfavored economic zones (DEZs), which are designated by the government. The following are the incentives:

- Exemption from profits tax for new investments made by companies that received before 1 July 2003 a certificate of permanent investor in the disfavored zone (the incentive applies during the existence of the disfavored zone); and
- Income tax exemption for one-off relocation allowances received by the employees of the company who establish their domicile in disfavored zones in which they are carrying out employment activities.

*Industrial Parks.* Companies administering industrial parks (administrator companies) may benefit from the following incentives:

- Exemption from taxes due on conversion of agricultural land to be used for industrial parks;
- Buildings, constructions and land located inside industrial parks are exempt from building tax and land tax; and
- Other incentives, which may be granted by the local authorities.

*Petroleum Companies.* Incentives are available to titleholders of oil and gas concessions. Titleholders are granted the concessions by the government in exchange for the payment of a royalty. The following are the incentives:

- For rehabilitation projects, a deductible provision equal to 10% of the annual exploitation profits derived by titleholders of oil and gas licenses that relate to seaside areas with water deeper than 100 meters (328 feet); and
- Exemption from payment of tax on oil and from excise duty on natural gas (consumption tax imposed on the value of oil and gas delivered) for the production extracted and directly exported by economic operators.

*Free-Trade Zones.* The following tax benefits are available to companies performing activities in free-trade zones:

- Value-added tax (VAT) exemption for supplies of goods to be placed in a free-trade zone and for supplies of goods made in a free-trade zone;
- Exemption from customs duties for foreign goods introduced into free-trade zones for storage purposes; and
- State aid for investments performed in free-trade zones.

*State Aid for Stimulation of New Investments.* Companies having their headquarters and carrying out their activities in Romania may benefit from state aid for initial investments if they meet both of the following conditions:

- The amount of the investments exceeds the Romanian lei equivalent of €30 million; and
- The investment creates at least 300 new jobs.

The investments and new jobs may be created in all economic sectors, with a few exceptions, such as fishing, steel industry, transportation and construction of ships.

The state aid for new investments is granted if certain additional conditions provided by the law are met. One of these conditions is that the company must make the investment in fixed tangible and intangible assets for certain specified purposes, including the creation of new units, the extension of existing units or the diversification of the production of an existing unit.

The state aid is granted based on documentation submitted by the company that establishes the satisfaction of the conditions and on a written confirmation issued by the Ministry of Finance that indicates the eligibility of the project for state aid. The documentation and the confirmation must be available before the beginning of the investment project.

The maximum amount of state aid that can be granted to one economic agent that performs investments and creates new jobs as a result of new investments ranges from the Romanian lei equivalent of €22,500,000 to €28,125,000, depending on the zone in which the investment is made.

The state aid for new investments is available from 2007 through 2011, with the possibility of extension.

Local councils may grant building and land tax exemptions to legal entities beginning in 2008, subject to the state-aid regulations.

**Capital Gains.** Capital gains are included in taxable income and taxed at the normal profits tax rate. Capital gains derived by non-resident companies are also subject to the standard 16% tax rate if they are derived from the disposal of the following: immovable property located in Romania; participation titles in a Romanian company; or a company with fixed assets that primarily consist of, directly or indirectly, immovable property located in Romania.

**Administration.** In general, the tax year is the calendar year.

Under the profits tax law, companies must file tax returns and pay profits tax quarterly (except for banks) by the 25th day of the first month of the following quarter.

Banks must also declare profits tax quarterly and pay profits tax in four quarterly advance payments. The payments are based on the profits tax for the preceding year, adjusted by the inflation rate. An exception applies to newly established banks and banks that recorded a tax loss in the preceding year. These banks apply the 16% rate to the accounting profit of the current quarter. No tax payment is required for a quarter in which an accounting loss is recorded.

Beginning with 2010, all companies must follow the advance payment procedure described above for banks.

The annual profits tax declaration must be filed and any balance of annual profits tax paid by 15 April of the following year.

Companies ceasing to exist must submit a final tax return and pay the profits tax by the date of submission of their financial statements with the Trade Registry.

The annual financial statements must be submitted within specified time periods after the year-end. The following are the time periods:

- Companies (in general), national companies and research and development institutes: 150 days; and
- Companies not performing any activities after their formation: 60 days.

The failure of a company to file tax returns by the deadline may result in a fine ranging from RON 1,000 to RON 5,000. Companies are liable for the payment of the fines for late filing of returns even if they pay the tax due.

Late payment interest at a rate of 0.1% per day of delay is imposed for the failure to pay the tax due by the deadline.

**Dividends.** Dividends paid by Romanian companies to resident companies are subject to a 10% withholding tax. The 10% tax is considered a final tax and, accordingly, the dividends are not included in the taxable incomes of the recipient. However, as a result of Romania's accession to the EU, no tax is imposed on dividends paid by a Romanian resident company to resident companies that held at least 15% (10% beginning in 2009) of the shares of the payer for an uninterrupted period of at least two years that ended on the date of payment of the dividend.

Dividends paid by Romanian companies to resident individuals and nonresident companies and individuals are subject to a 16% withholding tax. However, effective from 1 January 2007, dividends paid by a Romanian legal entity to a legal entity resident in another EU member state or to a permanent establishment of an entity from another EU member state that is located in another EU member state are exempt from withholding tax if the beneficiary of the dividends owned at least 15% of the participation titles in the Romanian legal entity for an uninterrupted period of at least two years that ended on the date of payment of the dividend. The minimum shareholding requirement will be reduced to 10%, effective from 2009.

**Foreign Tax Relief.** Foreign taxes may be credited against Romanian taxes.

### C. Determination of Trading Income

**General.** In general, all income that is booked as revenue is included in taxable income. However, the following items are not included in taxable income:

- Dividends received by a Romanian company from another Romanian company. Effective from 1 January 2007, dividends received by a Romanian company from an EU resident subsidiary and dividends received by Romanian permanent establishments of EU companies are also not taxable if certain conditions are satisfied.
- Increases in the value of shares held in other companies, resulting from an increase of capital in those companies through the incorporation of reserves, premiums, profits and similar items (for example, increases in the value of long-term investments).
- Revenues from the reversal of expenses and provisions that were previously considered to be nondeductible.

In general, only expenses related to the earning of taxable income are deductible for tax purposes. However, the following items are deductible within specified limits:

- Protocol and entertainment expenses (for example, gifts to clients and business lunches), up to 2% of the adjusted annual accounting profit before tax;
- Employee-related expenses (social expenses), up to 2% of the total salary cost (the limit is set annually through the Budget Law);
- Contributions to the legal reserve fund, generally up to 5% of the annual accounting profit before tax, until the reserve fund reaches 20% of share capital;
- Expenses with respect to perishable goods (goods on which a company might incur losses for various reasons, such as from damage suffered during the transport of the goods), which are deductible within the limits set by a government decision;
- Expenses incurred with respect to the daily allowance (amounts granted to employees traveling for business purposes for meals and other expenses) that are within 2.5 times the legal limits established for state institutions;
- Provisions (see *Provisions* below);
- Interest expenses and foreign-exchange losses related to loans subject to the debt-to-equity limitation, if the debt-to-equity ratio is not exceeded (see Section E);
- Depreciation expenses; and
- Expenses incurred on behalf of an employee with respect to optional occupational pension and private health insurance schemes.

The following expenses are not deductible for tax purposes:

- Service expenses, including management, assistance and consultancy expenses, if the taxpayer cannot justify their necessity and no contracts or other documents justifying the expenses are available.
- Losses in the value of shares held in other companies and losses in the value of long-term bonds, except for losses realized through sales of such shares or bonds.
- Expenses relating to insurance, other than insurance relating to risks of work-related accidents and insurance relating to assets owned by the company.
- Interest on loans that are subject to the debt-to-equity rules (see Section E), to the extent that it exceeds the following limits:
  - For loans denominated in lei (RON), the level of the reference interest rate published by the National Bank of Romania (NBR) for the last month of the quarter; and
  - For loans denominated in foreign currencies, an annual interest rate of 7% (beginning with 2007).
- Penalties and fines paid to Romanian or foreign authorities, as well as commercial penalties paid to nonresidents, except for those considered to be interest payments under double tax treaties.
- Losses from the reduction in the value of inventory and uninsured assets, as well as the related VAT.
- VAT related to certain nondeductible expenses.
- Romanian and foreign profits tax (however, a tax credit is allowed for taxes paid in other countries).
- Expenses incurred for the benefit of shareholders or associates, other than payments for goods and services at market value.
- Salary expenses that are not taxed at the level of the individual, unless the law provides otherwise.
- Expenses related to nontaxable income.

Sponsorship expenses are also nondeductible, but they may be claimed as a credit against profits tax due, subject to certain limitations (see Section B).

**Inventories.** Under Romanian law, inventories of raw materials and merchandise are valued at historical cost, while inventories of finished goods and work-in-progress are valued at production cost. The cost is calculated using the first-in, first-out (FIFO), weighted-average or last-in, first-out (LIFO) methods.

**Provisions.** Under Romanian law, the following provisions are deductible for profits tax purposes:

- Bad debt provisions under specified conditions;
- Provisions for performance guarantees granted to clients;
- Mandatory credit risk provisions, if established by banks, credit institutions or nonbanking financial institutions (leasing companies) in accordance with NBR norms; and
- Special provisions for titleholders of oil and gas concessions.

**Tax Depreciation.** The following are the permissible depreciation methods:

- Buildings: straight-line depreciation;
- Equipment: straight-line, reduced-balance or accelerated depreciation; and
- Other depreciable assets: straight-line or reduced-balance depreciation.

The depreciation method must be applied consistently. Land may not be depreciated.

For tax depreciation purposes, useful lives are prescribed by law. The following are the useful lives that are generally applicable to major categories of assets.

<b>Asset</b>	<b>Years</b>
Buildings and constructions (for example, roads and fences)	8 to 60
Machinery and equipment	2 to 24
Furniture and fittings	2 to 15
Motor vehicles	3 to 9

Under the accelerated depreciation method, the assets are depreciated at a 50% rate in the year of purchase, and the balance of the value is deducted using the straight-line method during the remaining useful life of the asset.

Patents, licenses, know-how, manufacturers' brands, trademarks and service marks, as well as other similar industrial and commercial property rights, are depreciated during the contract period or during the period in which the purchaser intends to use the rights.

Expenses for the production or purchase of software programs are deductible on a straight-line basis over three years. The reduced-balance and accelerated depreciation methods may be used for patents.

Goodwill cannot be depreciated for tax purposes.

Revaluations of the book value of land and fixed assets carried out before 31 December 2003 are taken into account for tax purposes. Revaluations carried out after 1 January 2007, as well as the part



remaining undepreciated as of 31 December 2006 with respect to revaluations carried out between 1 January 2004 and 31 December 2006, are also taken into consideration for tax purposes.

**Relief for Losses.** Tax losses may be carried forward for five years and are not adjusted for inflation. Losses of entities that cease to exist as a result of a split-up or merger may not be carried forward. Losses may not be carried back.

**Groups of Companies.** Although the Romanian law provides financial accounting rules for the consolidation of companies, the tax law treats each group company individually for tax purposes.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; certain enterprises, products and services are exempt, including banks, financial intermediaries and insurance companies; standard rate	19
Special consumption (excise) taxes, on energy products, beverages, cigarettes, coffee and luxury products; taxes are imposed at specified amounts per unit on certain products (for example, coffee and alcohol) and at percentage rates for other products; percentage rates	
Luxury goods	10 to 55
Weapons	100
Social security contributions; paid by employers on the total gross realized salaries (2008 rates)	
Social Insurance Fund; rate varies according to work conditions	19.5 to 29.5
Health Fund	5.5
Unemployment Fund	1
Labor Chamber Commission; rate varies according to whether the Labor Chamber or the company maintains the labor books	0.25/0.75
National Insurance Fund for Labor Accidents and Professional Diseases	0.4 to 3.6
Fund for Guarantee of Salary	
Payment Liabilities; this fund finances the payment of salary debts resulting from labor agreements entered into between employees and employers against which an insolvency procedure has begun	0.25
Tax on cars; computed based on pollution norms, cylindrical capacity and age	Various

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Romanian currency is the leu (RON). Regulation 4/2005, as amended, governs the foreign-exchange regime in Romania.

In Romania, transactions between resident companies or between resident companies and resident individuals must be made in local currency, with certain exceptions. Transactions between residents

and nonresidents can be made in domestic as well as in foreign currency. In the free-trade zones (see Section B), transactions between residents can also be performed in foreign currency.

Certain transactions that are deemed by law to be capital transfers may require the prior approval of the NBR. Such approval is no longer required for certain capital transfers (operations with securities and other instruments usually transacted on the monetary market) as a result of Romania's accession to the European Union (EU). Residents and nonresidents may open foreign-currency accounts in Romanian banks or foreign banks authorized to operate in Romania. Residents are allowed to open accounts in banks located abroad. Romanian legal entities may hold and use hard currency deposited with authorized banks.

Romanian legal entities may make payments in foreign currency to nonresidents without prior approval. Current-account transactions include, among others, imports of goods and services, payments of dividends and repatriation of profits.

Romanian and foreign entities may freely buy and sell hard currency on the interbank foreign-exchange market, but specified documentation is usually required.

**Transfer Pricing.** Under the provisions of the Romanian Fiscal Code, for transactions between related parties, the tax authorities may adjust the amount of income or expenses of either party to reflect the market value of the goods or services provided in the transaction. Such reassessment affects only the tax position of the Romanian entity. It does not affect the entity's financial statements.

The law indicates that in applying the domestic transfer-pricing measures, the Romanian tax authorities must also take into account the Organization for Economic Cooperation and Development (OECD) Transfer-Pricing Guidelines.

On request, Romanian entities performing transactions with non-resident related parties must make available to the tax authorities a file containing the transfer-pricing documentation. The specific content of the respective file has not yet been announced, but this information is expected to be published shortly.

**Debt-to-Equity Rules.** Interest expenses are fully deductible if the debt-to-equity ratio is no more than 3:1. Only loans granted for a period of greater than one year are subject to the debt-to-equity rules. If the 3:1 threshold is exceeded, interest expenses on such loans and losses from foreign-exchange differences related to such loans are not deductible, but they may be carried forward to the following tax years until they are fully deducted.

Interest and foreign-exchange losses are not subject to the debt-to-equity rules if the loans satisfy any of the following conditions:

- They are granted by international development banks or similar organizations, Romanian or foreign credit institutions, non-banking financial institutions or legal persons granting credits according to the law;
- They relate to bonds traded on a regulated market; or
- They are guaranteed by the state.

**F. Treaty Withholding Tax Rates**

The following table shows the applicable withholding rates under Romania's bilateral tax treaties.

	<b>Dividends (ff)</b>	<b>Interest (gg)</b>	<b>Royalties (gg)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Albania	10/15 (a)	10	15
Algeria	15	15	15
Armenia	5/10 (a)	10	10
Australia	5/15 (b)	10	10
Austria	0/5 (a)	0/3 (n)	3
Azerbaijan	5/10 (a)	8	10
Bangladesh	10/15 (b)	10	10
Belarus	10	10	15
Belgium	5/15 (a)	10	5
Bulgaria	10/15 (a)	15	15
Canada	5/15 (b)	10	5/10 (r)
China	10	10	7
Costa Rica (dd)	5/15 (a)	10	10
Croatia	5	10	10
Cyprus	10	10	0/5 (e)
Czech Republic	10	7	10
Denmark	10/15 (a)	10	10
Ecuador	15	10	10
Egypt	10	15	15
Estonia	10	10	10
Ethiopia (dd)	10	15	15
Finland	5	5	2.5/5 (f)
France	10	10	10
Georgia	8	10	5
Germany	5/15 (b)	0/3 (g)	3
Greece	20/45 (h)	10	5/7 (i)
Hungary	5/15 (j)	15	10
India	15/20 (a)	15	22.5
Indonesia	12.5/15 (a)	12.5	12.5/15 (k)
Iran (dd)	10	8	10
Ireland	3	0/3 (l)	0/3 (i)
Israel	15	0/10/15 (m)	10
Italy	10	10	10
Japan	10	10	10/15 (i)
Jordan	15	12.5	15
Kazakhstan	10	10	10
Kuwait	1	1	20
Latvia	10	10	10
Lebanon	5	5	5
Lithuania	10	10	10
Luxembourg	5/15 (a)	10 (c)	10
Macedonia	5	10	10
Malaysia	0/10 (o)	0/15 (p)	0/12 (q)
Malta	5/30 (h)	5	5
Mexico	10	15	15
Moldova	10	10	10/15 (k)
Morocco	10	10	10
Namibia	15	15	15
Netherlands	0/5/15 (s)	0/3 (t)	0/3 (t)
Nigeria	12.5	12.5	12.5
North Korea	10	10	10

	<b>Dividends (ff)</b>	<b>Interest (gg)</b>	<b>Royalties (gg)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Norway	10	10	10
Pakistan	10	10	12.5
Philippines	10/15 (a)	10/15 (u)	10/15/25 (v)
Poland	5/15 (a)	10	10
Portugal	10/15 (ee)	10	10
Qatar (dd)	3	3	5
Russian Federation	15	15	10
Singapore	5	5	5
Slovak Republic	10	10	10/15 (k)
Slovenia	5	5	5
South Africa	15	15	15
South Korea	7/10 (a)	0/10 (x)	7/10 (k)
Spain	10/15 (a)	10	10
Sri Lanka	12.5	10	10
Sudan	15	10	10
Sweden	10	10	10
Switzerland	10	10	0/10 (w)
Syria	0	7.5	10/15 (d)
Thailand	15/20 (a)	10/20/25 (z)	15
Tunisia	12	10	12
Turkey	15	10	10
Ukraine	10/15 (a)	10	10/15 (k)
United Arab Emirates	0/3 (y)	3	0/3 (aa)
United Kingdom	10/15 (a)	10	10/15 (i)
United States	10	10	10/15 (i)
Uzbekistan	10	10	10
Vietnam	15	10	15
Yugoslavia (Federal Republic of)	10	10	10
Yugoslavia (former) (bb)	5	7.5	10
Zambia	10	10	15
Nontreaty countries	16	0/16 (cc)	16

- (a) The lower rate applies if the beneficiary of dividends is a company owning at least 25% of the capital of the payer.
- (b) The lower rate applies if the beneficiary of dividends is a company owning at least 10% of the capital of the payer.
- (c) A 0% rate applies if the indebtedness on which the interest is paid is guaranteed, insured, or financed by the other contracting state or by a financial institution that is a resident of the other contracting state.
- (d) The 10% rate applies to cultural royalties.
- (e) The 5% rate applies to royalties paid for patents, brands, designs and models and know-how.
- (f) The 2.5% rate applies to royalties relating to computer software or industrial equipment.
- (g) The 0% applies to interest paid to the German government, Deutsche Bundesbank Kreditanstalt für Wiederaufbau or Deutsche Investitions und Entwicklungsgesellschaft (DEG); and to interest paid on a loan guaranteed by Hermes-Deckung. The 0% rate also applies to interest paid to the Romanian government if it is derived and beneficially owned by the certain types of institutions (for example, the Romanian government, an administrative-territorial unit, a local authority, or an agency, bank unit or institution of the Romanian government) or if the debt claims of Romanian residents are warranted, insured or financed by a financial institution wholly owned by the Romanian government. In addition, as long as Germany does not impose taxes on interest, Romania may not tax interest. The protocol to the treaty provides that the following types of interest may be taxed only in the state where the interest arises and according to the law of that state if such interest is deductible for profits tax purposes at the level of the debtor: interest

- derived from rights or debt claims carrying a right to participate in profits; interest linked to the borrower's profits; and interest derived from profit-sharing bonds.
- (h) The lower rate applies to dividends paid by companies resident in Romania.
- (i) The lower rate applies to cultural royalties.
- (j) The lower rate applies if the beneficiary of dividends is a company owning at least 40% of the capital of the payer.
- (k) The lower rate applies to payments received for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulas and processes, or industrial, commercial or scientific equipment, and for information concerning industrial, commercial or scientific experience.
- (l) The 0% rate applies to the following types of interest: interest paid in connection with sales on credit of industrial, commercial or scientific equipment; interest on loans granted by banks or other financial institutions (including insurance companies); and interest on loans with a term of greater than two years.
- (m) The 0% rate applies to interest arising in one contracting state with respect to debentures, public funds or similar instruments of the government that is paid to residents of the other contracting state and to interest on loans granted or guaranteed by the National Bank of Romania or by the Bank of Israel. The 15% rate applies to interest paid with respect to sales on credit of merchandise or industrial, commercial or scientific equipment and to interest on loans granted by banks. The 10% rate applies to other interest.
- (n) The rate is 0% for as long as Austrian law does not impose withholding tax on interest paid to Romanian residents.
- (o) The 0% rate applies to dividends paid by a company resident in Malaysia to a Romanian resident; the 10% rate applies to dividends paid by a company resident in Romania to a Malaysian resident.
- (p) The 0% rate applies to interest paid on long-term loans to Romanian residents.
- (q) The 0% rate applies to approved industrial royalties derived in Malaysia by Romanian residents.
- (r) The 5% rate applies to the following types of royalties:
- Copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or other artistic works. However, royalties with respect to motion picture films and royalties with respect to works on film or videotape or other means of reproduction for use in connection with television broadcasting do not qualify for the 5% rate.
  - Royalties for the use of, or the right to use, computer software, patents or information concerning industrial, commercial or scientific experience. However, royalties provided with respect to rental or franchise agreements do not qualify for the 5% rate.
- (s) The 0% rate applies if the beneficiary of the dividends is a company owning at least 25% of the capital of the payer. The 5% rate applies if the beneficiary of the dividends is a company owning at least 10% of the capital of the payer. The 15% rate applies to other dividends.
- (t) Romania will not impose withholding tax on interest and royalties paid to Dutch residents as long as Dutch domestic law does not impose withholding tax on these types of payments.
- (u) The lower rate applies to interest related to sales on credit of equipment, loans granted by a bank or public issues of bonds and debentures.
- (v) The 10% rate applies to royalties paid by a company that is registered as a foreign investor and is engaged in an activity in a priority economic field. The 15% rate applies to royalties related to film or television production. The 25% rate applies to other royalties.
- (w) Romania will not impose withholding tax on royalties paid to Swiss residents for as long as Swiss domestic law does not impose withholding tax on royalties.
- (x) The 0% rate applies to interest related to sales on credit of industrial and scientific equipment, as well as to interest on loans granted or guaranteed by the contracting states.
- (y) The 0% rate applies if the beneficial owner of the dividends is one of the following:
- The government of a contracting state or an institution or entity of the government; or
  - A company resident in a contracting state of which at least 25% of the capital is owned directly or indirectly by the government or government institutions of a contracting state.
- (z) The 10% rate applies if the beneficiary of the interest is a financial company, including an insurance company. The 20% rate applies to interest with respect to sales on credit. The 25% rate applies to other interest payments.
- (aa) The lower rate applies to approved industrial royalties.

- (bb) This treaty is currently applied only to Bosnia-Herzegovina.
- (cc) The 0% rate applies to the following types of interest:
- Interest on current deposits or accounts;
  - Interest from external instruments and credits and receivable titles representing external credits, which are contracted directly or through the issuance of titles or bonds;
  - Interest related to the issuance of state bonds on the domestic and foreign capital markets, if such instruments or titles are issued or guaranteed by the Romanian government, local councils, the National Bank of Romania or banks that act in the capacity of an agent of the Romanian government; and
  - Interest to debt instruments or titles issued by Romanian companies if the debt instruments or titles are traded on a securities market regulated by the relevant authority in the state where such market is located and if the interest is paid to a person that is not a related party of the issuer of the debt instrument or title.
- The 16% rate applies to other interest payments.
- (dd) The Romanian parliament has ratified the treaty, but the treaty is not yet effective.
- (ee) The lower rate applies if the beneficiary of dividends owns at least 25% of the capital of the payer for an uninterrupted period of two years before the payment of the dividends.
- (ff) In line with an EU directive, for dividends paid to companies residing in the EU, the following rules apply:
- The withholding tax rate in Romania is 0% if the beneficiary of the dividends owns at least 15% of the capital of the payer for an uninterrupted period of two years before the payment of the dividends. Beginning in 2009, the minimum required percentage holding will be 10%.
  - The withholding tax rate in Romania is 16% if the conditions mentioned above are not satisfied.
- (gg) In line with an EU directive, for interest and royalties paid to companies residing in the EU, the following rules apply:
- Until 31 December 2010, the withholding tax rate in Romania is 10% if the beneficiary holds at least 25% of the capital of the payer for an uninterrupted period of two years ending on the date of the payment;
  - Beginning on 1 January 2011, payments of interest and royalties will not be subject to withholding tax in Romania if the conditions mentioned in the preceding bullet are satisfied; and
  - The withholding tax rate in Romania is 16% if the conditions mentioned in the first bullet above are not satisfied.

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**A. At a Glance**

Corporate Profits Tax Rate (%)	20/24 (a)
Capital Gains Tax Rate (%)	20/24 (a)
Branch Tax Rate (%)	20/24 (a)
Withholding Tax (%)	
Dividends	0/9/15 (b)
Interest on Certain Types of State and Municipal Securities	15 (c)
Other Interest	20 (c)
Royalties from Patents, Know-how, etc.	20 (c)
Income from the Operation, Maintenance or Rental of Vessels or Airplanes in International Traffic	10 (d)
Payments of Other Russian-Source Income to Foreign Companies	20 (c)

Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 (e)

- (a) The basic corporate profits tax rate consists of a 6.5% rate payable to the central government and rates ranging from 13.5% to 17.5% payable to the regional governments. The regional governments set the rates applicable to their respective regions.
- (b) The 9% rate applies to dividends paid between Russian entities or to individuals who are residents of the Russian Federation. The 15% rate applies if either the payer or recipient of the dividends is a foreign legal entity. From 2008, the 0% rate applies to dividends received by Russian companies if the recipient has held at least 50% of the payer's capital for more than 365 days and if it has invested in the payer more than RUR 500 million (approximately US\$20 million).
- (c) This tax applies to payments to foreign legal entities that are not attributable to a permanent establishment in the Russian Federation. The tax is considered final.
- (d) This withholding tax applies if the income is not associated with activities carried out in the Russian Federation through a permanent establishment. The tax is considered final.
- (e) The time limit does not apply to taxpayers with the status of "resident of an industrial special economic zone." Also, see Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Profits Tax.** Russian enterprises and foreign legal entities operating through a permanent establishment are subject to tax. The definition of "permanent establishment" is similar to the definition of the same term in the model treaty of the Organization for Economic Cooperation and Development. Russian legal entities are subject to tax on their worldwide income. Russian legal entities are those registered in the Russian Federation. Foreign legal entities are subject to tax on their profits earned through a permanent establishment.

Foreign investment is permitted in various forms, including investment through 100% subsidiaries, share participation in joint stock companies and other types of Russian legal entities, branches and representative offices.

**Tax Rates.** For both Russian legal entities and foreign legal entities, the basic corporate profits tax rate consists of a 6.5% rate payable to the central government and rates ranging from 13.5% to 17.5% payable to the regional governments. The regional governments set the rates applicable to their respective regions. As a result, the basic corporate profits tax rate varies from 20% to 24%, depending on the rate set by the regional government.

**Capital Gains.** Capital gains are included in taxable income and taxed at regular rates. Losses on sales of fixed assets and other property are generally deductible, subject to certain restrictions. The deductibility of losses on sales of securities is limited.

**Administration.** The tax year is the calendar year. All taxpayers, except foreign legal entities, are required to make advance tax payments monthly. Each payment must equal one-third of the total advance payments for the preceding quarter. Alternatively, taxpayers may choose to pay tax by the 28th day of each month based on profits actually earned in the preceding month. Foreign legal entities must make quarterly tax payments. The final return for the year and the tax liability are based on actual results. Taxpayers' final returns are due on 28 March following the end of the



tax year. Significant penalties are imposed for failure to file returns by this deadline, which cannot be extended.

Taxpayers may apply to have excess payments of tax offset against future tax liabilities or refunded by the tax authorities. Offsets are performed within five days and refunds are granted within one month after the written application is received by the tax authorities. However, in practice, refunds may be difficult to obtain.

Taxpayers must register with the tax authorities at the following locations: the location where they were organized; the location of any economically autonomous subdivisions; and the location of any immovable property or means of transport owned by them.

**Dividends.** Dividends received are subject to withholding tax and are excluded from taxable profits. Dividends paid between Russian entities or to individuals who are residents of the Russian Federation are subject to withholding tax at a rate of 9%. Dividends received by a foreign entity from a Russian entity or by a Russian entity from a foreign entity are taxable at a rate of 15%. Russian individuals include dividends received from foreign legal entities in their income. No withholding tax is imposed on these dividends. Tax withheld from dividends received by a Russian legal entity from another Russian legal entity may be offset against the tax that would normally be withheld from dividends paid to Russian legal entities by the recipient.

A new regime exempting dividends received by Russian legal entities on strategic shareholdings is effective from 1 January 2008. Under this new regime, dividends are considered to be received from strategic shareholdings if the recipient has held at least 50% of the payer's capital for more than 365 days and if it has invested in the payer more than RUR 500 million (approximately US\$20 million).

**Foreign Tax Relief.** Foreign withholding taxes may be credited against Russian tax imposed on the same income, up to the amount of Russian tax on the income. Credit for tax on dividend income is available only if this is allowed by an applicable double tax treaty.

### C. Determination of Trading Income

**General.** Taxable profit is determined by computing the profit or loss from business activities and adding income from nonselling operations, such as leasing income and capital gains, but excluding dividends received from Russian enterprises. Income received in foreign currency is translated into rubles according to the relevant daily exchange rate determined by the Central Bank.

The Tax Code provides an open list of expenses that are deductible for tax purposes.

Interest on debts is deductible if the amount of interest does not deviate by more than 20% from the average level of interest charged on debts issued in the same quarter under comparable conditions. If no comparable loans were issued in the same quarter, the maximum deductible interest on ruble loans is calculated using the official Central Bank of Russia refinancing rate increased by a factor of 1.1 and the maximum deductible interest on debts in foreign currency is calculated using a 15% rate. In certain circumstances, the deductibility of interest on intercompany loans is

restricted by thin-capitalization measures. The scope of the thin capitalization measures was significantly broadened in 2006.

For details on tax depreciation, see *Tax Depreciation* below.

Foreign legal entities doing business in the Russian Federation through a permanent establishment are taxed on actual profits. The taxable profit equals income received as a result of carrying out activities in the territory of the Russian Federation through a permanent establishment, minus the amount of expenses incurred by the permanent establishment. General and administration expenses allocated by a foreign legal entity's head office to a Russian permanent establishment are deductible only if this is specifically allowed by an applicable double tax treaty. If a permanent establishment of a foreign entity provides for no charge services of a preparatory or auxiliary nature to third parties, the taxable profit derived from such activities is deemed to be 20% of the amount of the expenses incurred by the permanent establishment in such activities.

**Tax Depreciation.** All depreciable assets must be allocated to their relevant depreciation group and depreciated over their useful lives. The taxpayer determines the relevant depreciation group by using the "Classifier of Fixed Assets" issued by the Russian government. The "Classifier of Fixed Assets" provides for 10 depreciation groups and useful lives of 2 to more than 30 years for the depreciable assets in the groups. Based on the useful lives, the taxpayer calculates the depreciation deductible for profits tax purposes. Depreciation may be calculated using either the reducing-balance or straight-line methods.

Enterprises may deduct 10% of the initial book value of newly purchased fixed assets as current-year expenses.

**Relief for Losses.** Enterprises may carry forward unrelieved operating losses to the following 10 years. This time limit does not apply to the taxpayers with the status of "resident of industrial special economic zone."

**Groups of Enterprises.** Related enterprises may not offset profits and losses among members of a group.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on goods sold and services rendered, excluding exports and charter capital contributions	
Standard rate	18
Certain food products and children's goods	10
Many exports of goods and certain services	0
Assets tax; the tax base is the net book value of fixed assets; under prior law, the tax base also included intangible assets and inventory; maximum rate	2.2
Tariffs	
Export, rate varies by type of good	Various
Import	Various

Nature of Tax	Rate (%)
Social tax, on salaries of Russian employees; imposed on employers; tax is imposed on both Russian companies and permanent establishments of foreign entities; a regressive tax scale is used; the tax rate varies depending on the amount of gross income received by the employee	26 to 2
Supplementary contributions for workplace accidents; rate varies by industry	0.2 to 8.5
Income tax withholding by employers	
Residents	13
Nonresidents	30
Mineral extraction tax; imposed on the value or volume of extracted commercial minerals	Various
Transport tax	Various

### E. Foreign-Exchange Controls

Effective from 9 April 2006, the Central Bank no longer requires Russian enterprises to sell their foreign-currency receipts for rubles. However, foreign-currency receipts must be deposited in bank accounts in the Russian Federation.

### F. Treaty Withholding Tax Rates

Russian legislation currently states that the double tax treaties of the former USSR are still valid. The withholding rates under the USSR's treaties and the Russian Federation's treaties are listed in the following table. Like most double tax treaties, the treaty rates do not apply if domestic withholding tax rates (see Section A) are lower.

	Dividends %	Interest %	Royalties %
Albania	10	10	10
Armenia	5/10 (a)	0	0
Australia	5/15 (nn)	10	10
Austria	5/15 (b)	0	0
Azerbaijan	10	10	10
Belarus	15	10	10
Belgium	10	10	0
Bulgaria	15	15	15
Canada	10/15 (c)	10	0/10 (d)
China	10	10	10
Croatia	5/10 (e)	10	10
Cyprus	5/10 (f)	0	0
Czech Republic	10	0	10
Denmark	10	0	0
Egypt	10	0/15 (g)	15
Finland	5/12 (h)	0	0
France	5/10/15 (i)	0	0
Germany	5/15 (j)	0	0
Hungary	10	0	0
Iceland	5/15 (jj)	0	0
India	10	10	10
Indonesia	15	0/15 (k)	15
Iran	5/10 (ll)	7.5	5
Ireland	10	0	0
Israel	10	10	10

	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties %</b>
Italy	5/10 (l)	10	0
Japan	15	10	10 (m)
Kazakhstan	10	10	10
Kuwait	5	0	10
Kyrgyzstan	10	10	10
Lebanon	10	5	5
Lithuania	5/10 (l)	10	5/10 (pp)
Luxembourg	10/15 (n)	0	0
Macedonia	10	10	10
Malaysia	15	15	10/15 (o)
Mali	10/15 (p)	15	0
Moldova	10	0	10
Mongolia	10	10	20 (q)
Morocco	5/10 (r)	10	10
Namibia	5/10 (e)	10	5
Netherlands	5/15 (s)	0	0
New Zealand	15	10	10
North Korea	10	0	0
Norway	10	0/10 (t)	0
Philippines	15	15	15
Poland	10	10	10
Portugal	10/15 (u)	0/10 (v)	10
Qatar	5	0/5 (mm)	0
Romania	15	15	10
Slovak Republic	10	0	10
Slovenia	10	10	10
South Africa	10/15 (w)	10	0
South Korea	5/10 (x)	0	5
Spain	5/10/15 (y)(z)	0/5 (z)(qq)	5 (z)
Sri Lanka	10/15 (aa)	10	10
Sweden	5/15 (bb)	0	0
Switzerland	5/15 (cc)	5/10 (dd)	0
Syria	15	10	4.5/13.5/18 (kk)
Tajikistan	5/10 (ll)	0/10 (oo)	0
Turkey	10	10	10
Turkmenistan	10	5	5
Ukraine	5/15 (ee)	10	10
United Kingdom	10	0	0
United States	5/10 (ff)	0	0
Uzbekistan	10	10	0
Vietnam	10/15 (gg)	10	15
Yugoslavia	5/15 (hh)	10	10
Nontreaty countries	15	15/20 (ii)	20

- (a) The 5% rate applies if the recipient of the dividends has invested at least US\$40,000 or the equivalent in local currency in the payer's charter capital. The 10% rate applies to other dividends.
- (b) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 10% of the capital of the payer of the dividends and if the participation exceeds US\$100,000. The 15% rate applies to other dividends.
- (c) The 10% rate applies if the beneficial owner of the dividends owns at least 10% of the voting shares of the payer or, in the case of a Russian payer that has not issued voting shares, at least 10% of the statutory capital. The 15% rate applies to other dividends.
- (d) The 0% rate applies to royalties for the following: copyrights of cultural works (excluding films and television rights); the use of computer software; and the

use of patents or information concerning industrial, commercial or scientific experience, if the payer and the beneficiary are not related persons. The 10% rate applies to other royalties.

- (e) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer more than US\$100,000 or the equivalent amount in local currency. The 10% rate applies to other dividends.
- (f) The 5% rate applies to dividends paid to shareholders that have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 10% rate applies to other dividends.
- (g) The 0% rate applies if the recipient of the interest is the other contracting state or a bank that is more than 51%-owned by the other contracting state. The 15% rate applies to other interest payments.
- (h) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 30% of the capital of the payer of the dividends and if the foreign capital invested exceeds US\$100,000 or its equivalent in the national currencies of the contracting states at the moment when the dividends become due and payable. The 12% rate applies to other dividends.
- (i) The 5% rate applies if the recipient of the dividends has invested in the payer at least FF 500,000 (€76,225) or the equivalent amount in other currency and if the beneficiary of the dividends is a company that is exempt from tax on dividends in its state of residence. The 10% rate applies if only one of these conditions is met. The 15% rate applies to other dividends.
- (j) The 5% rate applies to dividends paid to corporations that hold a 10% or greater interest in the capital of the payer and have invested in the payer at least DM 160,000 (€81,807) or the equivalent amount in rubles. The 15% rate applies to other dividends.
- (k) The 0% rate applies if the recipient of the interest is the government of the other contracting state, including local authorities thereof, a political subdivision or the central bank. The 15% rate applies to other interest payments.
- (l) The 5% rate applies to dividends paid to corporations that hold at least 10% of the capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in other currency. The 10% rate applies to other dividends.
- (m) The rate is 0% for royalties for copyrights of cultural works.
- (n) The 10% rate applies if the recipient of the dividends holds at least 30% of the capital of the payer and has invested in the payer more than ECU 75,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (o) The 15% rate applies to royalties for copyrights, including film and radio broadcasts. The 10% rate applies to other royalties.
- (p) The 10% rate applies if the recipient of the dividends has invested more than FF 1 million (€152,449) in the payer. The 15% rate applies to other dividends.
- (q) Royalties are subject to tax in the country of the payer in accordance with that country's law.
- (r) The 5% rate applies if the beneficial owner of the dividends owns at least US\$500,000 of the shares of the payer. The 10% rate applies to other dividends.
- (s) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested at least ECU 75,000 or an equivalent amount in local currency. The 15% rate applies to other dividends.
- (t) The 0% rate applies if the recipient of the interest is the government of the other contracting state including local authorities thereof, an instrumentality of that state that is not subject to tax in that state or the central bank. The 10% rate applies to other interest payments.
- (u) The 10% rate applies if the beneficial owner is a company that, for an uninterrupted period of two years before the payment of the dividends, owned directly at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (v) The 0% rate applies if the interest is derived and beneficially owned by the other contracting state, a political or administrative subdivision or a local authority thereof or any institution specified and agreed to in an exchange of notes between the competent authorities of the contracting states in connection with any credit granted or guaranteed by them under an agreement between the governments of the contracting states. The 10% rate applies to other interest payments.
- (w) The 10% rate applies if the beneficial owner of the dividends owns at least 30% of the charter capital of the payer and has directly invested at least US\$100,000 in the charter capital of the payer. The 15% rate applies to other dividends.

- (x) The 5% rate applies to dividends paid to corporations that hold at least 30% of capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 10% rate applies to other dividends.
- (y) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) has invested at least ECU 100,000 in the charter capital of the payer and if the country of residence of the beneficial owner of the dividends does not impose taxes on the dividends. The 10% rate applies if one of these conditions is met. The 15% rate applies to other dividends.
- (z) The treaty does not provide relief for Spanish companies receiving dividends, interest or royalties from Russian sources if more than 50% of the Spanish company is owned (directly or indirectly) by non-Spanish residents.
- (aa) The 10% rate applies if the beneficial owner of the dividends owns at least 25% of the charter capital of the payer. The 15% rate applies to other dividends.
- (bb) The 5% rate applies to corporations that hold 100% (at least 30% if the recipient corporation is a part of joint venture) of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (cc) The 5% rate applies if the recipient of the dividends is a corporation that holds at least 20% of the capital of the payer and if, at the time the dividends become due, the amount of the recipient's investment exceeds CHF 200,000. The 15% rate applies to other dividends.
- (dd) The 5% rate applies to interest on bank loans. The 10% rate applies to other interest.
- (ee) The 5% rate applies to dividends paid to corporations that have invested in the payer at least US\$50,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (ff) The 5% rate applies to dividends paid to corporations holding at least 10% of the voting shares of the payer or, in the case of a Russian payer that has not issued voting shares, at least 10% of the statutory capital. The 10% rate applies to other dividends.
- (gg) The 10% rate applies to dividends paid to shareholders that have invested at least the equivalent of US\$10 million in the payer. The 15% rate applies to other dividends.
- (hh) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (ii) The 15% rate applies to interest on certain types of state and municipal securities; the 20% rate applies to other interest.
- (jj) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer at least US\$100,000 or an equivalent amount in local currency. The 15% rate applies to other dividends.
- (kk) The 4.5% rate applies to royalties paid to entities for copyrights of cinematographic films, programs and recordings for radio and television broadcasting. The 13.5% rate applies to royalties paid to entities for copyrights of works of literature, art or science. The 18% rate applies to royalties paid to entities for patents, trademarks, designs or models, plans, secret formulas or processes and computer software, as well as for information relating to industrial, commercial or scientific experience
- (ll) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer. The 10% rate applies to other dividends.
- (mm) The 0% rate applies if the recipient of the interest is the other contracting state or local authorities and governmental agencies of that state. The 5% rate applies to other interest payments.
- (nn) The 5% rate applies to dividends paid to corporations that hold at least 10% of the capital of the payer and have invested in the payer at least A\$700,000 or an equivalent amount in local currency and if dividends paid by a Russian company are exempt from tax in Australia. The 15% rate applies to other dividends.
- (oo) The 0% rate applies if the following circumstances exist:
- The interest is derived and beneficially owned by the other contracting state, a political or administrative subdivision or a local authority thereof;
  - The interest is derived and beneficially owned by the central bank or a similar institution specified and agreed to in an exchange of notes between the competent authorities of the contracting states; or
  - The interest is derived with respect to the deferral of payment under commercial credits.
- The 10% rate applies to other interest payments.

- (pp) The 5% rate applies to royalties paid for the right to use industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (qq) The 0% rate applies if the interest is paid on a long-term loan (seven or more years) issued by a bank or other credit institution or if the recipient of the interest is the government of the other contracting state, a political subdivision or a local authority.

The Russian Federation is planning to ratify tax treaties with Algeria, Argentina, Botswana, Brazil, Chile, Cuba, Estonia, Greece, Laos, Malta, Mauritius, Mexico, Oman and Singapore.

The Russian Federation is negotiating tax treaties with Bahrain, Bangladesh, Latvia, Madagascar, Nigeria, Taiwan, Thailand and Tunisia.

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### A. At a Glance

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	15 (a)(b)
Interest	15 (b)
Royalties	15
Management Fees	15
Technical Fees	15
Service Fees	15
Sports and Entertainment Fees	15
Lottery and Gambling Proceeds	15
Imports	5 (c)
Public Procurement	3 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This tax does not apply to dividends paid to resident companies.
- (b) This tax is a final tax.
- (c) This is a recoverable advance tax that applies to taxpayers without a tax clearance certificate issued by the Rwanda Revenue Authority.
- (d) This is a recoverable advance tax that applies to suppliers of goods and services to public institutions.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporate income tax is payable by companies, cooperative societies, foreign companies or their branches, autonomous public enterprises, associations and any other business entities that engage in for-profit business activities. Resident entities are subject to corporate income tax on worldwide income. Nonresident entities are subject to corporate income tax on income derived through a permanent establishment. Nonresident entities without a permanent establishment in Rwanda are not subject to corporate income tax, but they may be subject to other taxes in Rwanda.

An entity is considered to be resident in Rwanda during a tax year if it satisfies any of the following conditions:

- It is a company or an association established according to Rwandan laws;
- It has its place of effective management in Rwanda at any time during the tax year; or
- It is a Rwandan government company.

**Rates of Corporate Tax.** The corporate tax rate is 30%.

**Capital Gains.** Rwanda does not impose a separate tax on capital gains. Gains derived from disposals of business assets are aggregated with other income and are taxed at the normal corporate income tax rate.

**Administration.** A company's year of assessment (tax year) is the calendar year. A company wishing to maintain a tax year other than the calendar year must obtain prior approval from the Minister of Finance.

Companies must make installment payments, which are each equal to 25% of the tax due for the preceding tax year. The payment dates are 30 September, 31 December and 31 March. The installment payments are subtracted from tax due at the end of the financial year. Any overpayment is generally treated as a prepayment of future income tax liabilities or other tax liabilities. However, a company may seek a refund of the overpayment by a written request to the Commissioner General of Rwanda Revenue Authority.

Companies must file a final tax return accompanied by proof of payment of tax provided by the tax administration within six months after the end of the tax year (30 June for calendar-year taxpayers). The company calculates the tax payable on the tax return form. The tax due equals the tax payable minus installments and recoverable withholding tax paid. Any tax due must be paid with the return.

**Dividends.** Dividends paid to nonresident companies are subject to a final withholding tax at a rate of 15%. Dividends paid to resident companies and partnerships are exempt from tax.



**Foreign Tax Relief.** Relief for foreign taxes paid is granted in accordance with tax treaties with other countries. If foreign tax is paid to a country that does not have a tax treaty with Rwanda, the tax paid is unilaterally treated as a tax-deductible expense in Rwanda, subject to certain restrictions.

### C. Determination of Trading Income

**General.** Taxable income is accounting income adjusted for non-taxable income and for nondeductible expenses. Expenses are deductible if they are incurred wholly and exclusively in the production of income.

The deductibility of interest paid on loans denominated in a currency other than the Rwandan franc is restricted to the London interbank offer rate (LIBOR) plus 1%. Rwanda also restricts the deductibility of interest through a thin-capitalization rule (see Section E).

**Provisions.** General and specific provisions, which are reflected in the computation of financial accounting income, are generally not deductible for tax purposes. However, banks and financial institutions may deduct specific provisions for bad and doubtful debts.

**Tax Depreciation.** Depreciation charged in the financial statements is deductible for tax purposes, subject to limits set forth in the tax law. The following are the current allowable straight-line depreciation rates:

Asset Class	Rate (%)
Buildings (excluding land) including built-in equipment and plant	5
Intangible assets	10
Computer equipment and accessories	50
All other business assets	25

**Groups of Companies.** The income tax law does not allow the filing of consolidated returns, the combining of profits and losses of affiliated companies or the transfer of losses from loss companies to profitable members of the same group of companies.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax, on the supply of goods and services in Rwanda and on imports of goods and services	
Standard rate	18%
Other rate	0%
Social Security Fund of Rwanda (Caisse Sociale Du Rwanda, or CSR) contributions; paid by	
Employer	5%
Employee	3%
(both amounts are refunded to expatriates when they leave Rwanda)	
Trade licenses; varies by nature and location of business; maximum amount	Frw 240,000

<b>Nature of Tax</b>	<b>Rate</b>
Fund for the Genocide Survivors (Fond d'Aide aux Rescapes du Gēnocide, or FARGE); annual minimum contributions; paid by	
Retailers	Frw 10,000
Professionals	Frw 50,000
Wholesalers	Frw 50,000
Manufacturers, importers and international transporters	Frw 100,000
Partnerships and joint ventures	Frw 100,000
Limited companies	Frw 200,000

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The currency in Rwanda is the Rwandese franc (Frw). Rwanda does not impose foreign-exchange controls.

**Debt-to-Equity Rules.** Interest paid on loans exceeding four times equity does not qualify as a deductible expense for companies other than commercial banks and insurance companies.

## **F. Tax Treaties**

Rwanda has entered into a double tax treaty with Mauritius. It has signed double tax treaties with Belgium and South Africa, but these treaties have not yet been ratified.

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**A. At a Glance**

Corporate Income Tax Rate (%)	
Companies Engaged in Natural Gas	
Investment Activities	30 to 85 (a)
Entities Engaged in Oil and Other	
Hydrocarbon Production	85
Other Companies	20
Capital Gains Tax Rate (%)	20
Withholding Tax (%) (b)	
Dividends	5
Interest	5
Royalties	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (c)

(a) For further details, see Section B.

(b) For further details and a complete listing of withholding taxes, see Section B. The withholding tax rates in Saudi Arabia range from 5% to 20%.

(c) See Section C.

## B. Taxes on Corporate Income and Gains

**Income Tax.** Income tax is assessed on profits of the following:

- Non-Saudi shareholders of a resident capital company;
- A resident non-Saudi natural person who does business in Saudi Arabia;
- A nonresident who does business in Saudi Arabia through a permanent establishment;
- A nonresident who derives income subject to tax from sources within Saudi Arabia;
- A person engaged in the field of natural gas investment; and
- A person engaged in the production of oil and hydrocarbonic materials.

Partners in personal companies (that is, general partnerships, joint adventures and limited partnerships) are subject to tax rather than the personal companies themselves. For income tax purposes, non-Saudis do not include citizens (nationals) of countries that are the members of the Gulf Cooperation Council (GCC). Members of the GCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The share of profits attributable to interests owned by GCC nationals in a company is subject to *zakat* (see Section D). The share of profits attributable to interests owned by non-GCC nationals in that company is subject to income tax.

**Rates of Tax.** Natural Gas Investment Tax (NGIT) applies to natural or legal persons (including GCC nationals and entities) engaged in natural gas, natural gas liquids and gas condensates investment activities in the Saudi Arabia. NGIT does not apply to a company engaged in the production of oil and other hydrocarbons.

The NGIT rate ranges from 30% to 85% and is determined on the basis of the internal rate of return on cumulative annual cash flows. The NGIT rate includes income tax of 30%.

Companies engaged in the production of oil and other hydrocarbons are subject to tax at a rate of 85%.

Companies not subject to NGIT or the 85% tax are taxed at a rate of 20%.

The tax holidays that were available under the previous Foreign Capital Investment Regulations have been withdrawn. However, projects that were granted tax holidays under the previous regulations continue to benefit from the tax holidays for the approved period.

**Withholding Tax.** A Saudi resident entity is required to withhold tax from payments made to nonresidents that do not have a legal registration or a permanent establishment in Saudi Arabia with respect to income earned from a source in Saudi Arabia. This rule applies regardless of whether the payer is considered to be a taxpayer under the regulations and whether such payments are treated as a tax-deductible expense in the Saudi resident entity's tax declaration. Nonresident GCC nationals and entities are also subject to withholding tax rather than the *zakat* withholding tax, which applied under the prior rules.

The following are the withholding tax rates.

Type of Payment	Rate (%)
Rent, payments made for technical and consulting services, payments for air tickets, payments for freight or marine shipping, payments for international phone calls, dividends, interest, and insurance or reinsurance premiums	5
Royalties and payments made to head office or an affiliated company for services	15
Management fees	20
Payments for other services	15

The party withholding the tax must register with the Department of Zakat and Income Tax (DZIT) before the settlement of the first tax payment. The party withholding the tax must settle the tax withheld with the DZIT within the first 10 days of the month following the month in which the taxable payment is made and issue a certificate to the nonresident party. A delay fine of 1% for each 30 days of delay is computed beginning 30 days from the due date of tax until the date the tax is paid. An annual withholding tax return must be filed within 120 days following the end of the tax year.

**Capital Gains.** In general, capital gains are treated as ordinary income and taxed at the regular corporate rates.

Capital gains on sales by non-Saudi shareholders of shares in a Saudi joint stock company traded on the Saudi stock exchange are exempt from tax if the shares (investments) were acquired after the effective date of the new tax regulations (30 July 2004). Gains on the disposal of property other than assets used in the business activity are also exempt from tax.

**Administration.** All persons subject to tax (excluding nonresidents who derive income from a source in Saudi Arabia and are subject to final withholding tax) are required to register with the DZIT before the end of their first fiscal year. Failure to register with the DZIT results in the imposition of a fine ranging from SR 2,000 to SR 10,000.

A taxable entity that has a permanent establishment or commercial registration in Saudi Arabia must file its annual tax declaration with the DZIT based on its accounting books and records within 120 days following the end of the tax year and pay the income tax due with the tax declaration. However, the DZIT may and generally does request audited financial statements before issuing the final tax assessments.

The Saudi Arabia Income Tax Regulations require certification of annual tax declarations reporting taxable revenue in excess of SR 1 million. A locally licensed chartered accountant is required to certify validity of the information contained in the taxpayer's return and also certify the following:

- The information contained in the declaration is taken from the taxpayer's books and records (maintained in Arabic and in Saudi Arabia) and is in accordance with such records; and
- The return is prepared according to the standards, requirements and provisions of the Saudi Arabian Income Tax Regulations.

The partners of a personal company are subject to tax rather than the personal company itself. However, a personal company is required to file an information declaration within 60 days following the end of the tax year.

Fines for nonsubmission of tax declarations by the due date may be imposed at a rate of 1% of the total revenue, with a maximum fine of SR 20,000. A fine is also calculated based on percentages of the underpaid tax. Such a fine is payable if it exceeds the amount of the fine based on total revenue. The following are the percentages applied to underpaid tax:

- 5% of the underpaid tax if the delay is up to 30 days from the due date;
- 10% of the underpaid tax if the delay is more than 30 and not more than 90 days from the due date;
- 20% of the underpaid tax if the delay is more than 90 and not more than 365 days from the due date; and
- 25% of the underpaid tax if the delay is more than 365 days from the due date.

An advance payment on account of tax for the year is payable in three installments. The installments are due by the end of the sixth, ninth and twelfth months of the tax year. Each installment of advance payment of tax is calculated in accordance with the following formula:

$$25\% \times (A - B)$$

For the purposes of the above calculation, A equals the taxpayer's liability as per the tax declaration for the preceding year and B equals tax withheld at source for the taxpayer in the preceding year.

A taxpayer is not required to make advance tax payments in a year if the tax liability for the preceding year was less than SR 2,000,000.

A delay fine of 1% for each 30 days of delay is computed beginning 30 days from the due date of tax until the date the tax is paid.

**Dividends.** Dividends paid to nonresidents are subject to withholding tax at a rate of 5% (see *Withholding Tax* above).

**Foreign Tax Relief.** Saudi Arabia does not provide relief for foreign taxes paid.

### C. Determination of Tax Payable

**Taxable Profits.** Tax liabilities are assessed by the DZIT on the basis of the audited financial statements, as adjusted for tax purposes. In certain cases (for example, foreign airlines and foreign freight and land and marine transport companies operating in Saudi Arabia), tax may be assessed under the "presumptive basis." Under the presumptive basis, no financial statements are presented, and the tax liability is assessed on deemed profit calculated at rates specified in the tax regulations.

**Non deductible Expenses.** Certain expenses are not deductible in calculating taxable profit, including the following:

- Expenses not connected with the earning of income subject to tax;

- Payments or benefits to a shareholder, a partner or their relatives if they constitute salaries, wages, bonuses or similar items or if they do not represent an arm's length payment for property or services;
- Entertainment expenses;
- Expenses of a natural person for personal consumption;
- Income tax paid in Saudi Arabia or another country;
- Financial penalties and fines paid or payable to any party in Saudi Arabia except those paid for breach of contractual terms and obligations; and
- Payments of bribes and similar payments, which are considered criminal offenses under the laws of Saudi Arabia, even if paid abroad.

**Allocation of Overhead and Indirect Expenses.** The allocation of costs by a head office to a branch is not allowed. However, certain certifiable direct costs incurred abroad are deductible.

**Technical Costs.** For tax purposes, in general, technical costs are expenses that relate to engineering, chemical, geological or industrial work and research even if incurred wholly abroad by the main office or other offices. These costs are deductible if they can be substantiated by certain documents, such as technical services agreements, head office, auditors' certificates and invoices.

Under the new tax regulations, payments for technical and consultancy services rendered by third parties (including foreign shareholders, regardless of whether they are enjoying a tax holiday) are subject to withholding tax at a rate of 5%, regardless of the place of performance of services (for details regarding withholding taxes, see Section B).

**Agency Fees.** In a meeting on 30 July 2001, the Council of Ministers cancelled the law governing the relationship between a foreign contractor and a Saudi service agent. A foreign contractor may now operate in Saudi Arabia and contract with government agencies without appointing a Saudi service agent. Accordingly, the DZIT does not allow a deduction for agency fees paid to Saudi agents with respect to contracts entered into with government bodies after 30 July 2001.

**Contributions to Foreign Social Insurance, Pension and Savings Plans.** Any charge with respect to payments for foreign social insurance, employee pension plans and savings plans, and contributions to Saudi social insurance with respect to an employee's share are not deductible from Saudi-source revenue.

**Provisions and Reserves.** Provisions for doubtful debts, termination benefits and other similar items are not deductible. Specific write-offs and actual employment termination benefit payments that comply with Saudi Arabian labor laws are deductible. Provisions for doubtful debts are allowed as deductible expenses for banks if they are confirmed by the Saudi Arabian Monetary Agency.

**Depreciation.** Depreciation is calculated for each group of fixed assets by applying the prescribed depreciation rate to the remaining value of each group at the fiscal year-end.

The remaining value for each group at the fiscal year-end is calculated as follows:

The total remaining value of the group at the end of the preceding fiscal year	X
– The depreciation charge for the preceding year	(X)
+ 50% of the cost of assets added during the current year and the preceding year	X
– 50% of the proceeds from assets disposed of during the current year and the preceding year, provided that the balance is not negative	(X)
= Remaining value for the group	<u>X</u>

The tax law provides the following depreciation rates.

<b>Asset</b>	<b>Rate (%)</b>
Land (nondepreciable)	0
Fixed buildings	5
Industrial and agricultural movable buildings	10
Factories, plant, machinery, computer hardware and application programs (computer software) and equipment, including cars and cargo vehicles	25
Expenses for geological surveying, drilling, exploration expenses and other preliminary work to extract natural resources and develop their fields	20
All other tangible and intangible depreciable assets that are not included in the above groups, such as furniture, aircraft, ships, trains and goodwill	10

Assets acquired under build-operate-transfer (BOT) or build-operate-own-transfer (BOOT) contracts must be depreciated over the period of contract or the remaining period of contract.

Cost of repairs or improvements of fixed assets are deductible, but the deductible expense for each year may not exceed 4% of the remaining value of the related asset group at year-end. Excess amounts must be added to the remaining value of the asset group and depreciated.

**Relief for Losses.** Losses may be carried forward indefinitely. However, the maximum loss that can be offset against a year's profit is 25% of the tax-adjusted profits for that year. Saudi tax regulations do not provide for the carryback of losses.

If a change of 50% or more occurs in the underlying ownership or control of a capital company, no deduction is allowed for the non-Saudi share of the losses incurred before the change in the tax years following the change.

#### **D. Zakat**

*Zakat* is a religious levy on Saudi or GCC nationals and companies that are wholly owned by Saudi or GCC nationals. The rate of *zakat* is 2.5% of capital employed that is not invested in fixed assets, long-term investments and deferred costs, as adjusted by net results of operations for the year. Complex rules apply to the calculation of *zakat* liabilities, and it is therefore suggested that *zakat* payers seek specific advice suited to their circumstances.



## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Saudi Arabia does not impose foreign-exchange controls.

**Supply and Erection Contracts.** Profits from “supply only” operations to Saudi Arabia are exempt from income tax (whether the contract is made inside or outside Saudi Arabia) because the supplier trades “with” but not “in” Saudi Arabia. The net profits of operations that include supply, erection or maintenance are subject to tax, and the contractors are required to register with the DZIT and submit a tax declaration in accordance with the tax regulations.

The following information must generally be submitted in support of the cost of imported materials and equipment:

- Invoices from the foreign supplier;
- Customs clearance document; and
- If the supplying entity is the head office of the Saudi Arabian branch, a certificate from the external auditor of the head office confirming that the cost claimed is equal to the international market value of the equipment supplied (usually the contracted selling price).

In general, no profit results in the Saudi Arabian books on materials and equipment supplied, because the revenue from the sale of equipment equals the cost based on the sales value declared for customs.

**Subcontractors.** Payments to subcontractors, reported by a taxpayer in its tax return, are subject to close scrutiny by the DZIT. The taxpayer is expected to withhold tax due on payments to non-resident subcontractors and to deposit it with the DZIT, unless the taxpayer can provide a tax file number or tax clearance certificate as evidence that such subcontractor is settling its tax liability.

Tax is not required to be withheld from payments to subcontractors resident in Saudi Arabia. However, a taxpayer is required to retain 10% of the subcontract value until the subcontractor furnishes evidence that it has fulfilled its tax and *zakat* obligations to the DZIT with respect to the contract.

**Imports from Head Office and Affiliates.** A Saudi mixed company is expected to deal on an arm’s length basis with its foreign shareholders or any affiliated company of its foreign shareholders. The company may be required to submit to the DZIT a certificate from the seller’s auditors confirming that the materials and goods supplied to the Saudi Arabian company were sold at the international market price prevailing at the date of dispatch. This requirement also applies to foreign branches importing materials and goods from the head office for the fulfillment of their Saudi contracts.

## F. Tax Treaties

Saudi Arabia has entered into double tax treaties with China, France, India, Malaysia and Pakistan, which have been ratified by their respective governments and are currently in force. It has also signed double tax treaties with Austria, Italy, the Russian Federation, South Africa, Spain and Turkey. Saudi Arabia is negotiating double tax treaties with Germany, the Netherlands, and the United Kingdom.

Saudi Arabia has entered into limited tax treaties with the United Kingdom, the United States and certain other countries for the reciprocal exemption from tax on income derived from the international operation of aircraft and ships.

## SENEGAL

(Country Code 221)

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### A. At a Glance

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	10 (c)
Directors' Fees and Nondeductible Expenses	16 (d)
Interest	6/8/16/20 (e)
Royalties from Patents, Know-how, etc.	20
Payments to Nonresidents for Certain Services and Activities	20 (f)
Branch Remittance Tax	10 (g)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is FCFA 500,000 (FCFA 750,000 if annual turnover exceeds FCFA 250 million a year and FCFA 1 million if annual turnover exceeds FCFA 500 million a year).
- (b) In certain circumstances the tax is deferred or reduced (see Section B).
- (c) See Section B for special rules applicable to certain dividends.
- (d) See Section C for a list of nondeductible expenses.
- (e) The 6% rate applies to interest on long-term bonds. The 8% rate applies to bank interest. The 20% rate applies to interest on deposit receipts. The 16% rate applies to other interest payments.
- (f) This tax is imposed on technical assistance fees and certain other payments to nonresident companies and nonresident individuals that do not carry on a trade or business in Senegal. The rate is 15% for payments to French individuals or corporations.
- (g) This rate may be modified by a tax treaty. See Section B.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Senegalese companies are taxed on the territoriality principle. As a result, companies carrying on a trade or business outside Senegal are not taxed in Senegal on the related profits. Foreign companies with activities in Senegal are subject to Senegalese corporate tax on Senegalese-source profits only.

**Tax Rates.** The corporate income tax rate is 25%, and the minimum tax (*impôt minimum forfaitaire*, or IMF) payable is FCFA 500,000 (FCFA 750,000 if annual turnover exceeds FCFA 250 million a year and FCFA 1 million if annual turnover exceeds FCFA 500 million).

The profits realized in Senegal by branches of foreign companies that have not been reinvested in Senegal are deemed to be distributed and are therefore subject to a 10% withholding tax. This system is subject to treaty modification.

Corporations may apply for various categories of priority status and corresponding tax exemptions. The priority status varies depending on the nature of the project and the level of investments (including free industrial zone facilities).

**Capital Gains.** Capital gains are generally taxed at the regular corporate rate. The tax, however, can be deferred if the proceeds are used to acquire new fixed assets in Senegal within three years or in the event of a merger (or other corporate acquisition).

If the business is totally or partially transferred or discontinued, only one-half of the net capital gain is taxed if the event occurs less than five years after the start-up or purchase of the business, and only one-third of the gain is taxed if the event occurs five years or more after the business was begun or purchased.

Capital gains on sales or transfers of land and buildings are also subject to land tax (see Section D).

**Administration.** The tax year is the calendar year. Companies must file their tax returns by 30 April of the year following the tax year.

Corporate tax must be paid in two installments (each equal to one-third of the previous year's tax) by 15 February and 30 April. The 15 February installment may not be less than FCFA 500,000 (FCFA 750,000 or FCFA 1 million, if applicable). The balance must be paid by 15 June.

Late payments are subject to interest (plus a 25% penalty for the late payment of the FCFA 500,000, FCFA 750,000 or FCFA 1 million minimum tax).

**Dividends.** Dividends paid are subject to a 10% withholding tax.

A parent corporation may exclude the net dividends received from a subsidiary if all of the following apply:

- The parent corporation and the subsidiary are either joint stock companies or limited liability companies;
- The parent corporation has its registered office in Senegal and is subject to corporate income tax;
- The parent corporation holds at least 20% of the shares of the subsidiary; and
- The shares of the subsidiary are subscribed to or allocated when the subsidiary is created, and they are registered in the name of the parent company, or, alternatively, the parent company commits to holding the shares for two consecutive years in registered form.

Dividends distributed by a Senegalese parent company that consist of dividends received from a Senegalese subsidiary that is at least 20% owned are not subject to dividend withholding tax on the second distribution.

**Foreign Tax Relief.** In general, foreign tax credits are not allowed; income subject to foreign tax that is not exempt from Senegalese tax under the territoriality principle is taxable net of the foreign tax. However, the tax treaty with France provides a tax credit for French tax paid on dividends.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared according to generally accepted accounting principles and the rules contained in the OHADA Accounting Plan.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Foreign head-office overhead, limited to 20% of Senegalese taxable profits before deduction of foreign head-office overhead (unless otherwise provided for by tax treaties);
- The amount of interest paid to shareholders in excess of two percentage points above a standard annual rate set by the central bank and the amount of interest on loans in excess of the capital stock amount;
- Certain specific charges over specified limits; and
- Taxes, penalties, gifts and most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director).

**Inventories.** Inventory is normally valued at the lower of cost or market value.

**Provisions.** In determining accounting profit, companies must establish certain provisions, such as a provision for a risk of loss or for certain expenses. These provisions are normally deductible for tax purposes if they provide for clearly specified losses or for expenses that are probably going to occur and if they appear in the financial statements and in a specific statement in the tax return.

**Capital Allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated. The straight-line method is generally allowed. The following are some of the applicable straight-line rates.

Asset	Rate (%)
Commercial and industrial buildings	3 to 5
Office equipment	10 to 15
Motor vehicles	20 to 25
Plant and machinery	10 to 20

In certain circumstances, plant and machinery as well as other assets may be depreciated using the declining-balance method or an accelerated method.

**Relief for Tax Losses.** Losses may be carried forward three years; losses attributable to depreciation may be carried forward indefinitely. Losses may not be carried back.

**Groups of Companies.** There is no fiscal integration system equivalent to a consolidated filing position in Senegal.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Internal turnover tax, a value-added tax, on goods sold and services rendered	18
Business activity tax ( <i>patente</i> ), based on the business rental value of tangible assets and equipment and the number of employees	Various
Registration duties, on transfers of real property or businesses	1 to 15
Land tax, on capital gains resulting from sales or transfers of land and buildings	15
Payroll taxes; paid by the employer	
Senegalese employee	3
Foreign employee	3
Social security contributions	
Paid by the employer on each employee's annual gross salary, up to FCFA 756,000	7 to 11
Regular pension, paid on each employee's gross salary, up to FCFA 2,952,000; paid by	
Employer	8.4
Employee	5.6
Additional pension, paid on an executive's gross salary, up to FCFA 8,856,000; paid by	
Employer	3.6
Employee	2.4

### E. Foreign-Exchange Controls

Exchange control regulations exist in Senegal for financial transfers outside the West African Countries Economic and Monetary Union (UEMOA).

### F. Treaty Withholding Tax Rates

Senegal has signed a multilateral tax treaty with the other members of the West African Economic Community (CEAO), which are Burkina Faso, Côte d'Ivoire, Mali, Mauritania and Niger. It has also signed the Organisation Commune Africaine Mauricienne (OCAM) multilateral tax treaty. OCAM no longer exists, but under the principles of international law, the multilateral agreements promulgated by OCAM continue to have effect. Senegal has entered into bilateral tax treaties with Belgium, Canada, France, Italy, Morocco, Norway and Tunisia.

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends %	Interest %	Royalties %
Belgium	10	16	10
Benin	10	16	0
Burkina Faso	10	16	0
Canada	10	16/20 (a)	15
Central African Republic	10	16	0
Congo	10	16	0
Côte d'Ivoire	10	16	0
France	10	15	15
Gabon	10	16	0
Italy	10	15	15

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Mali	10	16	0
Mauritania	10	16	0
Morocco	10	10	10
Niger	10	16	0
Norway	10	16	16
Rwanda	10	16	0
Togo	10	16	0
Tunisia	10	16	0
Nontreaty countries	10	6/8/16/20 (b)	20

- (a) The 20% rate applies to interest on deposit receipts. The 16% rate applies to other interest payments.  
 (b) For details, see footnote (e) to Section A.

Senegal has signed tax treaties with China, Lebanon, Qatar and Taiwan, but these treaties have not yet been ratified.

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*The Union of Serbia and Montenegro ceased to exist on 25 May 2006. The following chapter provides information on taxation in the Republic of Serbia only.*

### A. At a Glance

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10
Withholding Tax (%)	
Dividends	20 (a)
Interest	20 (b)
Royalties from Patents, Know-how, etc.	20 (b)
Capital Gains and Leasing Fees	20 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

- (a) This tax applies to nonresident companies and to resident and nonresident individuals. Under the Personal Income Tax Law, withholding tax is imposed on only 50% of the dividends paid to resident individuals.  
 (b) This tax applies to nonresident companies and to resident and nonresident individuals.  
 (c) This tax applies to nonresident companies. Individuals are taxed under a separate law at rate of 20%.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies resident in the Republic of Serbia (RS) are subject to tax on their worldwide income. A company is resident in the RS if it is incorporated in the RS or if its central management and control is actually exercised in the RS. Nonresident companies are subject to tax only on their income derived from the RS. Nonresident companies are companies registered in other countries that have a permanent place of business in the RS. Foreign representative offices may not derive profits from their activities in the RS. However, if they do derive such profits, the profits are subject to tax in the RS.

**Rate of Corporate Income Tax.** The rate of corporate income tax in the RS is 10%.

**Tax Incentives.** A company investing in fixed assets (except for passenger cars, furniture, works of art and decorative goods for furnishing the company premises) within the scope of its registered business may decrease its calculated tax by an amount equal to 20% of these investments, but the tax credit may not exceed 50% of the calculated tax for the year of the investment. For small enterprises, the percentage of the tax credit is increased to 40%, but the tax credit may not exceed 70% of the calculated tax. The amount of the tax reduction that is not allowed as a result of this limitation may be carried forward and used as a tax credit, subject to the limitation, in the following 10 years. Companies in specified industries may claim a tax credit equal to 80% of investments in fixed assets, but the credit may not exceed the amount of corporate income tax for the year of the investment. The unused part of such credit can be carried forward for 10 years. Industries qualifying for the 80% credit include the following: agriculture; fishing; textile and leather manufacturing; production of base metal and standard metal products; office machines; electrical units; radio, television and communication equipment; medical instruments; motor and other vehicles; recycling activities; and video and cinema production.

A company qualifies for a 10-year tax exemption if it invests RSD 600 million (approximately €7.6 million) in its own fixed assets and if it employs at least 100 new workers in the period of investment.

Under certain conditions, a company may apply for a five-year tax exemption if it performs activities in a region of “extraordinary importance” (an underdeveloped area of the country, which has not yet been identified) and if it invests RSD 6 million (approximately €75,949) and employs five new workers in such a region.

A company qualifies for a tax credit if it establishes a new business unit in an undeveloped region. The amount of the credit is determined by applying against the corporate income tax due the percentage of the total profit of the company that is attributable to the new business unit. The incentive applies for a two-year period.

Companies that hire new employees may decrease their taxable income by 100% of the total costs of salaries (net salaries, income tax, social contributions paid by employees and social contributions paid on behalf of the employer) paid in the tax year with respect to new employees who enter into indefinite employment

contracts during the tax year. Companies may claim the deduction if the number of signed indefinite employment contracts during the year exceeds the number of those terminated. If some employment contracts were terminated, companies may apply a prorated incentive, which equals the positive difference between salary costs for new employees and the potential salary costs of employees whose employment contracts were terminated, calculated from the date of termination until the end of the year.

Under the Personal Income Tax Law, companies may be exempted from paying salary tax and employer social security contributions for the following newly employed individuals: trainees and registered unemployed individuals who are under age 30; disabled individuals; and individuals over age 45.

**Capital Gains.** Capital gains derived from the disposal of real estate, industrial property rights, capital participations and shares and other securities (except certain bonds issued by government bodies or by the national bank) are included in taxable income and are subject to tax at the regular corporate income tax rate.

Capital gains may be offset by capital losses incurred in the same year, and net capital losses may be carried forward to offset capital gains in the following 10 years.

**Administration.** The tax year is the calendar year. A company may not elect a different tax year.

Companies must file annual tax returns by 10 March of the year following the tax year.

Companies must make monthly advance payments of tax by the 15th day of the month following the month for which the payment is due. Companies determine advance payments based on their tax return for the preceding year. Under a self-assessment system, companies must correctly assess their tax liabilities to avoid the imposition of significant penalties.

Companies may submit an interim tax return during the tax year to increase or decrease their monthly advance payments of tax if significantly changed circumstances exist, such as changes to the company's activities or to the tax rules.

At the time of submission of the annual tax return, companies must pay any positive difference between the tax liability calculated by the company and the total of the advance payments. They may receive a refund of any overpayment, or the overpayment may be treated as a prepayment of future monthly payments.

**Dividends.** Resident companies include dividends received from its nonresident affiliates in taxable income.

Corporate and dividend taxes paid abroad may be claimed as a tax credit up to the amount of domestic tax payable on the dividends. Any unused amount can be carried forward for offset against corporate profit tax in the following 10 years. This tax credit applies only to dividends received by companies with a shareholding of 25% or more in the payer for at least one year before the tax return is submitted.

A 20% withholding tax is imposed on dividends paid to non-residents.



An applicable double tax treaty may provide a reduced withholding tax rate for dividends (see Section F). To benefit from a double tax treaty, a nonresident must verify its tax residency status and prove that it is the true beneficiary of the income.

**Foreign Tax Relief.** Companies resident in the RS that perform business activities through permanent establishments outside the RS may claim a tax credit for corporate income tax paid in other jurisdictions. The credit is equal to the lower of the foreign tax and the Serbian tax paid on the foreign-source income.

### C. Determination of Trading Income

**General.** The assessment is based on the profit or loss shown in the financial statements prepared in accordance with International Accounting Standards and domestic accounting regulations, subject to certain adjustments for tax purposes.

Taxable income is the positive difference between income and expenses. For tax purposes, income consists of income from the following: sales of products, goods and services; financial income; capital gains; and income resulting from transfer-pricing adjustments.

Tax-deductible expenses include expenses incurred in performing business activities. Expenses must be documented. Certain expenses, such as depreciation (see *Tax Depreciation* below) and donations, are deductible up to specified limits. Reductions in value of assets may not be deducted unless the assets were damaged due to force majeure.

**Inventories.** Inventories must be valued using average prices or the first-in, first-out (FIFO) method.

**Provisions.** Legal entities may deduct as expenses adjustments or write-offs of particular claims if such actions are in conformity with the law on accounting. This conformity exists if the following conditions are satisfied:

- It can be proved that the amounts were included previously in a taxpayer's revenues;
- The claim is written off from the taxpayer's accounting books as uncollectible; and
- It can be proved that the claims could not be settled by a judicial procedure.

If a debt is payable by a legal entity to the person who owed the debt that was adjusted or written off, the legal entity is subject to tax on the debt owed to it. In addition, legal entities may not deduct provisions made for long-term capital maintenance of fixed assets. However, long-term provisions made for renewal of natural resources, possible costs payable in a guarantee period and retained indemnities or deposits can be deducted. Adjustments can be made for claims if at least 60 days have elapsed since the due date for the payment of the claims. Banks may deduct the net increase in the amount of the general bad debt provision during the tax year, in conformity with the regulations of the National Bank.

Severance payments that are calculated but not paid out are not deductible for tax purposes.

**Tax Depreciation.** Intangible and fixed assets are divided into five groups, with depreciation and amortization rates prescribed for each group. The straight-line method must be used for the first group, while the declining-balance method must be used for the assets in the other groups.

The following are the depreciation and amortization rates.

Group of Assets	Rate (%)
I	2.5
II	10
III	15
IV	20
V	30

A ruling classifies assets into the above groups. Group I includes real estate.

Accelerated depreciation may be claimed at rates up to 25% higher than the normal rates for computer equipment as well as for fixed assets that are used for specified ecological purposes, science research or staff education or training.

**Relief for Losses.** Tax losses incurred in business operations may be carried forward for 10 years. Loss carrybacks are not allowed.

**Groups of Companies.** Under group relief provisions, companies in a group that consists only of companies resident in the RS may offset profits and losses for tax purposes. The group relief provisions are available if a parent company holds directly or indirectly at least 75% of the shares of subsidiaries. To obtain group relief, a group must file a request with the tax authorities. If group relief is allowed, the group companies must apply the group relief rules for five years. Each group company files its own annual income tax return and the parent company files a consolidated tax return based on the subsidiaries' tax returns. Any tax liability after consolidation is paid by the group companies with taxable profits on a proportional basis.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on supplies of goods and services in the RS and on imports of goods; certain tax exemptions with or without the right to deduct input VAT are granted; VAT taxpayers are legal entities and entrepreneurs who had turnover of goods and services in excess of RSD 4,000,000 (approximately €50,633) in the preceding 12 months or who expect to have annual turnover greater than the threshold;	
Standard rate	18
Lower rate	8
Property tax, on rights in immovable property in the RS, including residential and business buildings, apartments, garages, buildings and rooms for resting and recreation, and other buildings; certain immovable	

Nature of Tax	Rate (%)
property is exempt; tax credits are available for the dwellings of owners and their immediate families; tax is due within 10 days after receipt of property and is thereafter imposed annually based on the market value of the property as of 31 December of the preceding year	
Tax rates for rights in immovable property held by taxpayers that are required to maintain business books	0.4
Tax rates for rights in immovable property held by other taxpayers; progressive rates	0.4 to 3
Absolute rights transfer tax, on transfers of rights to immovable property (generally the same definition as for the property tax described above) in the RS; certain transfers are exempt; tax base is the higher of the price stated in the contract for the transfer of the rights or the market value of the rights; tax is imposed on the transferor	
Registered shares in companies and ownership rights in limited liability companies	0.3
Other rights	2.5
Payroll taxes, on monthly gross salaries	
Tax on income; paid by employee	12
Social security contributions (for health and pension/disability funds); paid by	
Employer	17.9
Employee	17.9
Employment fund contributions; paid by	
Employer	0.75
Employee	0.75
Contributions for Serbian commercial chamber; paid by employer	0.19
Contributions for Belgrade commercial chamber; paid by employer	0.255

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** In the RS, the legal tender is the dinar (RSD).

In the RS, all payments, collections and transfers must generally be effected in dinars, but a "currency clause" may allow conversion from hard currency on the date of payment. In addition, the following transactions may be effected using foreign currencies:

- Sale and rental of flats, office space and other real estate;
- Debt servicing of foreign-currency loans in the RS;
- Collection of insurance premiums from nonresidents;
- Collection of premiums and transfers based on life insurance contracts, as well as transfers of amounts with respect to damage claims based on compulsory insurance of owners of motor vehicles that have a foreign registration plate;
- Purchase and sale of national securities denominated in foreign currency; and
- Payments into the guarantee fund of a member of a center for the registration, deposit and clearance of securities.

Residents and nonresidents may open foreign-currency accounts in RS banks or in foreign banks authorized to operate in the RS. Foreign currency may be held in such accounts and used for payments out of the RS, such as dividends and payments for purchases of imports, as well as for authorized foreign-currency payments in the RS.

**Transfer Pricing.** Under general principles, transactions between related parties must be made on an arm's-length basis. The difference between the price determined by the arm's length principle and the taxpayer's transfer price is included in the tax base.

**Thin-Capitalization Rules.** Tax deductions for loan interest and related expenses paid in dinars to related entities are limited by the following formula: four times the value of the taxpayer's own capital multiplied by 1.1 times the interest rate set by the National Bank for loans granted to commercial banks on 31 December of the preceding year. For foreign-currency loans, the multiplier of 1.1 is applied to the rate of the central bank of the state that issued the relevant currency. For banks and other financial organizations, the multiplier for the value of capital is increased to 10. Amounts exceeding these limitations may be deducted in the following year.

## F. Treaty Withholding Tax Rates

The table below lists the withholding tax rates under the treaties of the former Union of Serbia and Montenegro and under the treaties of the former Federal Republic of Yugoslavia and the former Yugoslavia that remain in force. It is suggested that taxpayers check with the tax authorities before relying on a particular tax treaty.

	Dividends	Interest	Royalties
	%	%	%
Albania	5/15	10	10
Belarus	5/15	8	10
Belgium	10/15	15	10
Bosnia-Herzegovina	5/10	10	10
Bulgaria	5/15	10	10
China	5	10	10
Croatia	5/10	10	10
Cyprus	10	10	10
Czech Republic	10	10	5/10
Denmark	5/15	0	10
Egypt	5/15	15	15
Finland	5/15	0	10
France	5/15	0	0
Germany	15	0	10
Hungary	5/15	10	10
Italy	10	10	10
Kuwait	5/10	10	10
Latvia	5/10	10	5/10
Macedonia	5/15	10	10
Malaysia	0/20	10	10
Moldova	5/15	10	10
Netherlands	5/15	0	10
North Korea	10	10	10
Norway	15	0	10
Poland	5/15	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Romania	10	10	10
Russian Federation	5/15	10	10
Slovak Republic	5/15	10	10
Slovenia	5/10	10	5/10
Sri Lanka	12.5	10	10
Sweden	5/15	0	0
Switzerland	5/15	10	10
Ukraine	5/10	0/10	10
United Kingdom	5/15	10	10
Nontreaty countries	20	20	20

## SEYCHELLES

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### A. At a Glance

Corporate Income Tax Rate (%)	40 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	40 (a)
Withholding Tax (%)	
Dividends	15 (b)
Interest	10/40 (c)
Royalties from Patents, Know-how, etc.	0/15 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This is the maximum rate. See Section B.
- (b) This withholding tax applies to dividends paid to nonresidents. The withholding tax is considered to be a final tax. Dividends paid to residents are not subject to tax.
- (c) The 10% rate applies to interest paid to nonresidents other than banks, finance companies or other enterprises whose principal business is lending money. The 40% rate applies to interest paid to a resident or nonresident holder of a bearer security issued by a financial institution in Seychelles at the time of redemption or surrender of the security. The 10% and 40% withholding taxes are considered to be final taxes.
- (d) The 0% rate applies to royalties paid to residents. The 15% rate applies to royalties paid to nonresidents for the following: the use of, or right to use, copyrights, patents, designs, models or trademarks; the use of secret formulas, processes or know-how; and scientific, industrial or commercial knowledge, information or services to the extent social security contributions (see Section D) have not been made on the payments. Social security contributions are payable on royalties for services performed in the Seychelles.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Under the Business Tax Act, resident and nonresident corporate and noncorporate businesses are subject to business tax on their income derived from the Seychelles.

A company is a resident of the Seychelles if it is incorporated there. In addition, a company not incorporated in the Seychelles

that carries on business in the Seychelles is a resident if its central management and control are located in the Seychelles or if its voting power is controlled by shareholders who are residents of the Seychelles.

**Rates of Corporate Income Tax.** The same business tax rates apply to corporate and noncorporate businesses. The rate is 0% for the first SR 250,000 of taxable income. Taxable income in excess of SR 250,000 is taxed at a rate of 40%.

The Tourism Investment Act 2003 offers various tax incentives to encourage investment in the Seychelles. These incentives include reduced rates of business tax, tax credits, special deductions and accelerated depreciation. The Ministry of Finance and Communications grants Certificates of Approval to investors for projects that are approved under the Tourism Investment Act 2003. An entity's Certificate of Approval specifies the incentives for which the entity is eligible and is subject to review and renewal every year.

**Capital Gains.** Capital gains are not taxable in the Seychelles.

**Administration.** The tax year is the calendar year.

Annual tax returns are due on 31 March. However, the Commissioner of Taxes may allow tax agents to submit tax returns by 31 July for businesses declaring taxable income and by 31 October for businesses declaring taxable losses.

The tax shown on the annual tax return is payable by the date shown in the notice of assessment.

Companies must make monthly provisional tax payments during the tax year, based on the income for the preceding year. The payments are due by the 15th day of the month following the month for which a payment is due. At the beginning of each tax year, the Commissioner of Taxes issues a provisional tax assessment, which sets out the required provisional payments.

**Dividends.** A 15% withholding tax is imposed on dividends paid to nonresidents. Dividends paid to residents are not subject to tax. Dividends received from nonresident companies are not taxable.

**Foreign Tax Relief.** Seychelles does not grant relief for foreign taxes paid.

### **C. Determination of Trading Income**

**General.** Taxable income is the income reported in companies' financial statements, subject to adjustments required by the tax law.

Interest derived from financial institutions and income derived from renting a building or part of a building for use exclusively as a residence are exempt from taxation.

Expenses incurred to earn taxable income are deductible, unless they do not pertain to the business of the taxpayer.

Social security contributions (see Section D) may be deducted from taxable income.

**Inventories.** For tax purposes, inventory may be valued at the lower of cost or market value, or at replacement cost.

**Provisions.** Provisions are not deductible for tax purposes.

**Tax Depreciation.** Under the Business Tax Act, office buildings are depreciated at a rate of 50% for the first year, and 25% for the second and third years. Hotels are depreciated at a rate of 20% for the first year and 10% for the following eight years. Other buildings are depreciated at a straight-line rate of 4%. For other assets, normal depreciation is calculated using the following straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Plant and machinery	20
Office equipment	20
Vehicles	20
Computers	33*
Furniture and fittings	10

\* The rate is 34% for the first year of depreciation.

Businesses may elect in writing to apply accelerated depreciation rates to a particular category of assets. This election must be made by the due date for the business tax return for the year in which the election is made or within an additional time period allowed by the Commissioner of Taxes. It may not be revoked during the period of ownership of the category of assets.

For depreciation purposes, the maximum value of a passenger salon car is SR 100,000 if Trades Tax (see Section D) does not apply to, or is not paid on, the vehicle. For all other passenger salon cars, the maximum value for depreciation purposes is SR 300,000.

In the year of acquisition, depreciation is allowed for the full year for assets acquired on or before 30 June. For assets acquired after that date, depreciation is calculated proportionally based on the period that the asset was installed or used.

Capital expenditure of up to SR 5,000 on the assets described above, other than buildings, is fully deductible in the year of expenditure.

**Relief for Losses.** Business tax losses may be carried forward for five years. Unabsorbed depreciation may be carried forward indefinitely. Tax losses may not be carried back.

**Groups of Companies.** Consolidated returns are not allowed. Each company must submit its own tax return.

## **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Goods and services tax	
Locally manufactured goods listed in Schedules 1 and 2 of the regulations	12
Imported goods; imposed in addition to customs duty	12
Local service providers listed in Schedule 3 of the regulations and tourism-related service providers listed in Schedule 4 of the regulations	7 to 15

Nature of Tax	Rate (%)
Social security contributions, on monthly salaries and benefits paid to employees; paid by	
Employer	
On first SR 1,000	10
On next SR 9,000	20
On amounts exceeding SR 10,000	40
Employee	5
Trades Tax (customs duty), on imported goods	Various

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Seychelles currency is the Seychelles rupee (SR).

Under the Foreign Earnings (Regulation) Act, 1996, persons (except for the persons described below) engaging in a trade or business or other activity with a nonresident must require the nonresident to make payment with respect to such trade, business or activity in a designated currency. The currency must be remitted or offered for sale to a financial institution within the earlier of 90 days from the date the person engages in a trade, business or activity or 21 days from the date of the payment, or within a longer period determined by the Central Bank of Seychelles based on the relevant circumstances. Persons excluded from these requirements are financial institutions, international business companies incorporated under the International Business Companies Act, holders of licenses under the International Trade Zone Act and persons carrying on nondomestic insurance business under the Insurance Act.

**Debt-to-Equity Rules.** Seychelles does not impose any thin-capitalization rules.

**Transfer Pricing.** Seychelles does not have transfer-pricing rules.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Botswana	5/10 (a)	7.5	10
China	5	10	10
Cyprus	0	0	0
Indonesia	10	10	10
Malaysia	10	10	10
Mauritius	0	0	0
Oman	5	5	10
South Africa	0	0	0
Thailand	10	10/15 (b)	15
United Arab Emirates	0	0	0
Vietnam	10	10	10
Zimbabwe	10	10	10
Nontreaty countries (c)	15	10/40	15

- (a) The 5% rate applies if the beneficial owner of the dividends is a company that holds at least 25% of the capital of the payer of the dividends. The 10% rate applies to other dividends.
- (b) The 10% rate applies to interest paid to financial institutions, including insurance companies. The 15% rate applies to other interest payments.
- (c) For details, see Section A.



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**A. At a Glance**

Corporate Income Tax Rate (%)	18 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	18 (a)
Withholding Tax (%) (b)	
Dividends	0 (c)
Interest	15
Royalties from Patents, Know-how, etc.	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1 (d)
Carryforward	Unlimited (d)

- (a) Various tax exemptions and reductions are available (see Section B).  
 (b) See Section F.  
 (c) See Section B.  
 (d) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Income tax is imposed on all income derived from sources in Singapore, together with income from sources outside Singapore if received in Singapore. However, a nonresident company that is not operating in or from Singapore is generally not taxed on foreign-source income received in Singapore. A company is resident in Singapore if the control and management of its business is exercised in Singapore; the place of incorporation is not relevant.

Remittances of foreign income in the form of dividends, branch profits and services income (specified foreign income) are exempt from tax if the income is received from jurisdictions with headline tax rates of at least 15%. Only persons resident in Singapore qualify for the tax exemption. In addition, such foreign income must be subject to tax in the foreign jurisdiction from which it is received (subject-to-tax condition).

For purposes of the above exemption, the subject-to-tax condition is not satisfied if no tax is imposed by that foreign jurisdiction on the specified foreign income. In addition, for dividends, the condition is not satisfied if no tax is imposed by the foreign jurisdiction on either the dividend itself or the income out of which the dividend is paid. However, as a concession, the subject-to-tax condition is deemed to be satisfied for specified foreign income that is exempt from tax in the foreign jurisdiction from which the income is received if the exemption directly results from the foreign jurisdiction granting a tax incentive for carrying out substantive business activities in that jurisdiction. On approval, a tax exemption may be granted for foreign-source income that does not qualify for exemption under the foreign-source income exemption regime if the income is remitted under specified scenarios or circumstances.

**Rates of Corporate Income Tax.** The standard corporate income tax rate is 18%. Seventy-five percent of the first S\$10,000 of chargeable income, excluding Singapore dividend income, is exempt from tax, and 50% of the next S\$290,000 is exempt from tax. The balance of chargeable income, including Singapore dividend income, is fully taxable at the standard rate of 18%. Singapore dividend income is exempt from tax if the dividend is paid by a company under the one-tier system of taxation (see *Dividends* below).

**Tax Incentives, Exemptions and Reductions.** The following tax incentives, exemptions and tax reductions are available in Singapore.

*Pioneer Companies and Pioneer Service Companies.* A pioneer enterprise is exempt from income tax on its qualifying profits for a period of up to 15 years.

*Development and Expansion Incentive.* The Development and Expansion Incentive is available to companies that engage in high value-added operations in Singapore but do not qualify for pioneer incentive status and to companies whose pioneer status has expired. Qualifying income of these companies is taxed at a rate of not less than 5%. The maximum initial relief period is 10 years, with possible extensions of up to 5 years at a time and a maximum total incentive period of 20 years.

*Investment Allowances.* On approval, investment allowances are available to companies that engage in qualifying projects. Such allowances are granted in addition to the normal tax depreciation allowances, and are based on a specified percentage (up to 100%) of expenditure incurred on productive equipment.

This incentive also applies to flagship concept projects in retail, food and beverage, and entertainment approved during the period of 1 April 2005 through 31 March 2010.

*Approved Royalties, Technical Assistance Fees, and Contributions to Research and Development Costs.* Approved royalties, technical assistance fees, and contributions to research and development costs paid to nonresidents may be exempted from withholding taxes.

All the above incentives are also available under the Headquarters Program (see *Headquarters Program* below).

*Tax Exemption Scheme for New Companies.* Subject to certain conditions, a newly incorporated and tax-resident Singapore company may qualify for a full tax exemption on the first S\$100,000 of chargeable income (excluding Singapore dividends). The exemption applies only to the qualifying company's first three consecutive years of assessment.

*Payments for Software, Information and Digitized Goods.* Exemption from withholding tax applies to the following payments to nonresidents: payments for shrink-wrap software; payments for site licenses, software downloaded from the Internet by end-users and software bundled with computer hardware; and payments made by end-users for the providing of information and digitized goods.

*Payments for Use of Submarine Cable Capacity.* Payments for the use of capacity on (including the indefeasible right to use) an international telecommunication submarine cable operated by nonresidents are exempt from withholding tax (applicable only to amounts accruing in or derived from Singapore during the period from 28 February 2003 through 27 February 2008).

*Foreign Royalties and Interest Income Used for Research and Development.* Companies approved under the Research and Development and Intellectual Property Management Hub incentive are granted a tax exemption for an initial period of five years on foreign-source royalties and interest income that are used for research and development purposes in Singapore.

*Headquarters Program.* The Headquarters Program consists of an International Headquarters (IHQ) Award and a Regional Headquarters (RHQ) Award. The program applies to entities incorporated or registered in Singapore that provide headquarters services to their network companies on a regional or global basis. Under the IHQ and RHQ Awards, companies may enjoy incentive rates of 0% to 15% for a specified period on incremental qualifying income, depending upon the amount of commitment to Singapore. This commitment is demonstrated by various factors, including headcount, business spending and quality of people hired. Qualifying income includes foreign income from sales, services, royalties, franchise fees, management fees, commissions, and potentially dividends and interest income. These items must be earned from non-Singapore customers or payers.

*Approved Holding Companies.* Although Singapore does not have a capital gains tax regime, gains on disposals of shares may be subject to income tax if the gains are considered income in nature. To provide greater certainty on the tax treatment for gains on investments of subsidiaries and to enhance Singapore's tax environment as part of the effort to make Singapore an international hub for global companies, effective from 17 February 2006, approved holding companies are exempt from tax on disposals of shares in subsidiaries if they satisfy both of the following conditions:

- They own at least 50% of the shares of the subsidiary; and
- The shares were held continuously for a minimum period of 18 months immediately before the date of disposal and for a minimum period of 18 months beginning on the date the company is granted approved holding company status and ending on the date of disposal.

To qualify as an approved holding company, the company must have been awarded the IHQ incentive (see *Headquarters Program* above).

*Finance and Treasury Center Incentive.* Income from specified treasury activities and services provided to approved network companies is subject to tax at a rate of 10% or other concessionary rate for a period of up to 10 years, with possible extensions of up to 10 years at a time. Approved network companies are offices and associated companies of the company granted the tax incentive that have been approved by the relevant authority for purposes of the incentive.

*Financial Sector Incentive.* A 5% or 10% tax rate applies to income derived from carrying on various qualifying activities by approved financial sector companies in Singapore.

*Shipping Incentives.* Certain income derived from the operation of Singapore-flagged and non-Singapore-flagged vessels in international waters is exempt from tax. Income derived by approved shipping enterprises from the operation and leasing of non-Singapore flagged vessels in international waters is exempt from tax for a period of 10 years, with possible extensions of up to 10 years at a time. Approved shipping enterprises may apply for a third incentive period of 10 years, resulting in an increase in the maximum period of the incentive from 20 years to 30 years.

To increase ship financing activities in Singapore, a Maritime Financing Incentive (MFI) scheme has been introduced, effective from 1 March 2006. Under the MFI scheme, the ship investment vehicle is granted a tax exemption on qualifying income, and the ship investment manager is subject to a 10% concessionary tax rate on qualifying income. MFI status is granted from 1 March 2006 to 28 February 2011 for a period not exceeding 10 years or such further period as may be specified. For this purpose, the ship investment vehicle should be either a company incorporated and resident in Singapore or a registered business trust deriving income from the chartering or finance leasing of qualifying seagoing ships.

*Approved International Freight and Logistics Operators.* Approved ship agencies, ship management companies and logistics providers are taxed at a rate of 10% on their qualifying incremental income for a period of five years.

*Global Trader Program.* Under the Global Trader Program, approved companies enjoy a concessionary tax rate of 5% or 10% on qualifying transactions conducted on qualifying commodities and products, which include energy, agricultural, building, industrial, electrical, and consumer products, as well as commodity and product derivatives, including exchange-traded futures and over-the-counter derivatives.

*Commodity Derivative Trading Incentive.* A 5% concessionary tax rate applies to income derived from trading with specified parties in commodity derivatives and physical commodities incidental to derivatives, as well as to income derived from services as an intermediary for specified counterparties with respect to commodity derivative transactions.

*Approved Cybertrader Incentive.* Approved companies in Singapore are taxed at a rate of 10% or other concessionary rate on their incremental income derived from qualifying electronic commerce transactions. The incentive is granted for a period of up to five years.

*Venture Capital Funds Incentive.* Gains derived from the disposal of approved local and overseas investments, interest on convertible loan stocks and dividends derived from approved overseas investments are exempt from tax or taxed at a concessionary rate of not more than 10% for a period of up to 10 years. Extension periods of up to five years each may be available, but the maximum total incentive period is 15 years.

*Event Companies.* To promote more world-class events and activities in Singapore, event companies are granted a concessionary tax rate of 10% for qualifying tourism events approved during the period of 1 April 2005 through 31 March 2010.

**Capital Gains.** Capital gains are not taxed in Singapore. However, in certain circumstances, the Singapore Revenue considers transactions involving the acquisition and disposal of real estate, stocks or shares to be the carrying on of a trade, and, as a result, gains arising from such transactions are taxable.

**Administration.** The tax year, known as a year of assessment, runs from 1 January to 31 December. The period for which profits are identified for assessment is called the basis year. Therefore, income earned during the 2007 basis year is assessed for taxation in the 2008 year of assessment. For companies engaged in business in Singapore that adopt an accounting period other than the calendar year, the assessable profits are those for the 12-month accounting period ending in the year preceding the year of assessment. Non-trade investment income earned by such companies is assessed on a calendar-year basis. However, companies may elect to be taxed on such income (with the exception of Singapore franked dividends) on an accounting-year basis. Effective from the 2009 year of assessment, all companies will be taxed on such income on an accounting-year basis.

An estimate of the taxable income of a company must be filed within three months after the end of its accounting year. The statutory deadline for filing the income tax return is 30 November 2008 for the 2008 year of assessment and 31 October for the 2009 year of assessment and subsequent years. No extension of time to file the return is allowed.

Income tax is due within one month after the date of issue of the notice of assessment. In certain circumstances, companies are permitted to pay tax in monthly installments, up to a maximum of 10, the first installment being payable one month after the end of the accounting period.

A late payment penalty of 5% of the tax due is imposed if the tax is not paid by the due date. If the tax is not paid within 60 days of the imposition of the 5% penalty, an additional penalty of 1% of the tax is levied for each complete month that the tax remains outstanding, up to a maximum of 12%.

Penalties of up to S\$1,000 are imposed for late filings of tax returns. A higher penalty is also imposed on delinquent filers. Effective from 1 January 2008, double the amount of tax assessed is imposed as a penalty if the taxpayer fails or neglects without reasonable excuse to file a tax return for a year of assessment within two years after the deadline.

**Dividends.** Effective from 1 January 2003, a one-tier system of taxation replaced Singapore's full imputation system. Under the one-tier system, dividends paid by a company are exempt from income tax in the hands of shareholders, regardless of whether the dividends are paid out of taxed income or tax-free gains. However, a five-year transitional rule allows companies to continue to pay franked dividends to their shareholders up to 31 December 2007 under the prior imputation system, using corporate income tax that has been paid or deemed paid through 31 December 2002.

Under the full imputation system, dividends paid by a resident company out of profits subject to the normal corporate tax rate are deemed to be paid net of an 18% tax. This tax may be treated as paid (franked) out of the corporate income tax that has already been paid on the company's taxable profits. The 18% tax deducted at source is credited against the shareholder's tax liability, and any excess of the credit over the tax liability is refundable. Non-resident companies are not subject to these imputation rules. Resident companies enjoying tax incentives are also generally not subject to the imputation rules with respect to dividends paid out of the profits to which the incentives apply.

Deemed dividend distributions could result from share capital reductions, share buy-backs and redemptions. However, distributions made by a liquidator in the course of winding up a company are generally considered to be of a capital nature and consequently not subject to income tax.

**Foreign Tax Relief.** Singapore has entered into comprehensive double tax treaties with more than 50 countries, but notably not with the United States. Under Singapore rules, a foreign tax credit is limited to the lower of the foreign tax paid and the Singapore tax payable on that income, and the credit is generally granted on a country-by-country, source-by-source basis. A unilateral tax credit system, similar to treaty relief, is also available for certain income derived from countries that have not entered into tax treaties with Singapore.

### **C. Determination of Taxable Income**

**General.** In general, book profits reported in the audited financial statements prepared under generally accepted accounting principles are adjusted in accordance with the Singapore tax rules to arrive at the taxable income.

If a company maintains its financial accounts in a functional currency other than Singapore dollars, as required under the financial reporting standards in Singapore, it must furnish tax computations to the Singapore Revenue denominated in that functional currency in a manner as prescribed by the law.

The Singapore Revenue examines each set of accounts and computations separately, and intercompany transactions are expected to comply with the normal arm's length principle.

For expenses to be deductible, they must be incurred wholly and exclusively in the production of income and must be revenue in nature. As a concession, revenue expenses incurred from the first day of the accounting year in which a business earns its first dollar of trade revenue may be deducted for tax purposes. If the business can prove that it has started trading and incurred revenue expenses earlier than that date, it is allowed to deduct such expenses as well.

Motor vehicle (other than commercial vehicle) expenses are generally not deductible, and a limit is imposed on the deductibility of medical expenses. Special rules govern the deductibility of expenses for investment holding companies.

Expenses attributable to foreign-source income are not deductible unless the foreign-source income is received in Singapore and subject to tax in Singapore. In general, offshore losses may not be offset against Singapore-source income.

No deduction is allowed for the book depreciation of fixed assets, but tax depreciation (capital allowances) is granted according to statutory rates (see *Capital Allowances [Tax Depreciation]* below).

**Double Deductions.** Double deductions are available for certain expenses relating to approved trade fairs, exhibitions or trade missions, maintenance of overseas trade offices, overseas investment development, logistics activities, research and development, recruitment of overseas talent and donations.

**Inventories.** Trading inventory is valued at the lower of cost or net realizable value. Cost must be determined on a first-in, first-out (FIFO) basis; the last-in, first-out (LIFO) basis is not accepted.

**Provisions.** Specific provisions for doubtful debts may be deducted, but only to the extent that the debts arose from the trade and have proven to become irrecoverable during the basis period. Provisions of a general nature are usually not allowable (except on a limited basis in the case of certain financial institutions).

### **Capital Allowances (Tax Depreciation)**

*Plant and Machinery.* Depreciation allowances are given for capital expenditures incurred on the acquisition of plant and machinery used for the purposes of a trade or business. Most of these expenditures may be written off in equal amounts over three years if the taxpayer makes a formal claim for the allowance. Alternatively, expenditures on such assets may be claimed in one year if each item costs no more than S\$1,000. However, the total claim for all such assets may not exceed S\$30,000 for a year of assessment.

The cost of the following may be written off in the year of acquisition: computers; generators; factory or office automation equipment; robotic machinery; certain efficient pollution-control equipment; certified energy-efficient equipment or approved energy-saving equipment; and certain industrial noise- and chemical hazards-control equipment.

Expenditures on automobiles, other than commercial vehicles, generally do not qualify for capital allowances.

*Industrial Buildings.* An initial allowance of 25% plus an annual straight-line allowance of 3% are granted for buildings used for



specified purposes. No such allowances are granted for commercial buildings or hotels other than hotels on the island of Sentosa that were approved before 1 September 2007.

*Intellectual Properties.* Writing-down allowances (WDAs) are granted for capital expenditure incurred on the acquisition of intellectual property (IP) during the period of 1 November 2003 through 31 October 2013 if the legal and economic ownership of the IP lies with Singapore companies. The allowances are calculated on a straight-line basis over five years. The legal ownership requirement may be waived for IP rights acquired on or after 17 February 2006. On approval, WDAs for IP acquisition are granted to economic owners of IP if the Singapore company has substantial economic rights over the IP, but a foreign parent holds the legal title.

A five-year WDA is also available to a company carrying on a trade or business that has incurred expenditure under an approved cost-sharing agreement with respect to R&D activities for purposes of that trade or business. To encourage R&D collaborations, the writing-down period for qualifying capital expenditure under cost-sharing arrangements entered into and approved on or after 17 February 2006 is accelerated from five years to one year.

*Submarine Cable Systems.* Payments for Indefeasible Rights of Use (IRU) for international telecommunications submarine cable systems qualify for a writing-down allowance over the period of use.

*Other Matters.* Allowances are generally subject to recapture on the sale of a qualifying asset if the sales proceeds exceed the tax-depreciated value. If sales proceeds are less than the tax-depreciated value, an additional corresponding allowance is given.

**Relief for Trading Losses.** Trading losses may be offset against all other chargeable income of the same year. Unused losses may be carried forward indefinitely, subject to the substantial shareholders test (see below). Excess capital allowances can also be offset against other chargeable income of the same year and carried forward indefinitely subject to the substantial shareholders test and to the requirement that the trade giving rise to the capital allowances still be carried on (same trade test).

Effective from the 2006 year of assessment, a one-year carryback of up to an aggregate amount of S\$100,000 of current-year unused capital allowances and trade losses may be allowed, subject to the satisfaction of certain conditions and compliance with specified administrative procedures.

The carryforward of losses and capital allowances is subject to the shareholders remaining substantially (50% or more) the same at the end of the year (year of assessment for capital allowances) in which the losses or capital allowances arose and on the first day of the year of assessment in which relief is claimed (substantial shareholders test). If the shareholder of the loss company is itself another company, look-through provisions apply through the corporate chain to the final beneficial shareholder.

The one-year carryback of capital allowances is subject to the same trade test that is applicable to the carryforward of unused

capital allowances. Both the carryback of losses and carryback of capital allowances are also subject to the substantial shareholders test that is applicable to the carryforward of these items.

The Singapore Revenue has the authority to allow companies to deduct their unused tax losses and capital allowances, notwithstanding a substantial change in ownership at the relevant dates, if the change is not motivated by tax considerations (such as when the change is caused by the nationalization or privatization of industries, or if the shareholding of the company or its parent changes substantially as a result of the shares being widely traded on recognized exchanges). However, these losses and capital allowances may be offset only against profits from the same business.

**Groups of Companies.** Under group relief measures, current-year unused losses, unused capital allowances and unused donations may be transferred by one company to another within a group. A group generally consists of a Singapore-incorporated parent company and all of its Singapore-incorporated subsidiaries. Two Singapore-incorporated companies are members of the same group if one is 75% owned by the other, or both are 75% owned by a third Singapore-incorporated company.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Goods and Services Tax (GST) on any supply of goods and services, except an exempt supply, made in Singapore by a taxable person (a business is taxable if its annual supplies exceed S\$1 million) in the course of business and on imports of goods	0/7
Social security contributions (Central Provident Fund [CPF]); foreigners holding work passes are exempt	
For employees up to age 50, on monthly ordinary wages (lower rates apply if employee is older than age 50); the monthly salary ceiling for contributions is S\$4,500 for ordinary wages; contributions paid by	
Employer (limited to S\$653 a month)	14.5
Employee (limited to S\$900 a month)	20
Contributions on additional wages, such as bonuses and nonregular payments (limited to S\$76,500 less the total ordinary wages subject to CPF contributions in the year); paid by	
Employer	14.5
(For employees older than age 35 who earn total wages of S\$1,500 or less per month, graduated rates of up to 14.5% apply)	
Employee	20
(For employees older than age 35 who earn total wages of S\$1,500 or less per month, graduated rates of up to 20% apply)	

Nature of Tax	Rate (%)
(For both contributions on ordinary wages and contributions on additional wages, the employer's contribution rate for workers aged from above 50 to 55 is 10.5%; lower contribution rates apply to individuals older than age 55. The employee's contribution rate for workers aged from above 50 to 55 is 18%; lower contribution rates apply to individuals older than age 55.)	
Skills development levy, payable by employer for employees earning S\$2,000 or less a month	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Singapore does not impose any restrictions on the remittance or repatriation of funds in or out of Singapore.

**Debt-to-Equity Ratios.** Singapore does not impose any specific debt-to-equity restrictions.

**Antiavoidance Legislation.** Legislation permits the Singapore Revenue to disregard or vary any arrangement that has the purpose or effect of altering the incidence of taxation or reducing or avoiding Singapore tax liability. The Singapore Revenue also may tax profits of a nonresident in the name of a resident as if the latter is an agent of the former, if the profits of the resident from business dealings with the nonresident are viewed as lower than expected as a result of the close connection between the two parties.

**Transfer Pricing.** On 23 February 2006, the Singapore Revenue issued Transfer-Pricing Guidelines to assist companies in Singapore with the management or elimination of the risk of double taxation. The Guidelines are consistent with the arm's length principle outlined in the Organization for Economic Cooperation and Development (OECD) Transfer-Pricing Guidelines for Multinational Enterprises and Tax Administrations and serve as a starting point for framing the Singapore Revenue's expectations for related-party dealings.

Under the Guidelines, no formal requirements are imposed on companies to prepare transfer-pricing documentation. However, the Singapore Revenue expects companies to assess their transfer-pricing risk and prepare transfer-pricing documentation commensurate with that risk.

## F. Domestic and Treaty Withholding Tax Rates

In general, withholding tax at a rate of 15% is imposed on interest and other payments with respect to loans or indebtedness paid to nonresidents. However, interest paid by approved banks in Singapore on deposits held by nonresidents is exempt from tax if the nonresidents do not have a permanent establishment in Singapore and do not carry on business in Singapore by themselves or in association with others. In addition, tax exemption also applies to interest paid on certain qualifying debt securities issued before 31 December 2008 to nonresidents who do not have a permanent establishment in Singapore. The exemption also applies to nonresidents who have a permanent establishment in Singapore, but do not use the funds obtained from the operations of the permanent establishment to acquire the debt securities.

A 10% withholding tax is imposed on the following types of payments to nonresidents: royalties for the use of, or the right to use, intangible property; and payments for the use of, or the right to use, scientific, technical, industrial or commercial knowledge or information. A 15% withholding tax is imposed on rent and other payments to nonresidents for the use of movable property.

Payments made to nonresident professionals for services performed in Singapore are subject to a final withholding tax of 15% on their gross income, unless the nonresident professionals elect to be taxed at 20% of net income.

In general, an 18% withholding tax is imposed on payments to nonresident companies for assistance or services rendered in connection with the application or use of scientific, technical, industrial or commercial knowledge or information, and for management or assistance in the management of any trade, business or profession. Payments for services performed wholly outside Singapore are exempted by concession. For management fees paid to a nonresident related party, this concession applies only if the fees represent a pure cost reimbursement without any mark-up.

Tax treaties may override the above withholding tax rules.

Singapore does not levy a withholding tax on dividends (see Section B).

The rates of withholding tax on interest and royalties may be reduced under the terms of a double tax treaty, and details of the rates applicable to treaty countries are set out below.

	<b>Interest %</b>	<b>Royalties (j) %</b>
Australia	10	10
Austria	5 (a)(b)	5
Bahrain	5 (a)	5
Bangladesh	10	10
Belgium	10	5
Brunei Darussalam	5/10 (n)(q)	10
Bulgaria	5 (a)	5
Canada	15 (b)	15
China (r)	10 (a)(c)	6/10 (s)
Cyprus	10 (a)(c)	10
Czech Republic	0	10
Denmark	10 (a)	10
Egypt	15 (a)	15
Estonia (v)	10 (a)	7.5
Fiji	10 (a)	10
Finland	5 (a)	5
France	10 (a)(b)	0
Germany	8 (a)(b)	8
Hungary	5 (a)(b)	5
India	10/15 (a)(d)	10
Indonesia	10 (a)(b)	15
Israel	7 (a)	5
Italy	12.5 (a)	15
Japan	10 (a)	10
Kazakhstan (t)	10 (a)	10
Korea	10 (a)	15
Kuwait	7 (a)	10

	<b>Interest</b> %	<b>Royalties (j)</b> %
Latvia	10 (a)	7.5
Lithuania	10 (a)	7.5
Luxembourg	10 (a)	10
Malaysia	10 (a)(b)	8 (o)
Mauritius	0	0
Mexico	15 (a)(b)(e)	10
Mongolia	5/10 (a)(n)	5
Myanmar	10 (a)(f)	10/15 (k)
Netherlands	10 (a)	0
New Zealand	15	15
Norway	7 (a)	7
Oman	7 (a)	8
Pakistan	12.5 (a)	10
Papua New Guinea	10	10
Philippines	15 (b)	15 (l)
Poland	10 (a)	10
Portugal	10 (a)(b)	10
Qatar (u)	5 (a)	10
Romania	5 (a)(b)	5
Slovak Republic	0	10
South Africa	0	5
Sri Lanka	10 (a)(b)	15
Sweden	15 (a)(g)	0
Switzerland	10 (h)	5 (h)
Taiwan	15	15
Thailand	10/15 (a)(d)	15
Turkey	10 (a)(i)	10
United Arab Emirates	7 (a)	5 (m)
United Kingdom	10 (a)	10
Vietnam	10 (a)	5/15 (p)
Nontreaty countries	15	10

- (a) With certain exceptions, interest paid to the government of a contracting state is exempt.
- (b) Interest is exempt under certain specified circumstances.
- (c) The rate is 7% for interest paid to banks or other financial institutions.
- (d) The 10% rate applies to interest paid to financial institutions. The 15% rate applies to other interest.
- (e) The rate is 5% for interest paid to banks.
- (f) The rate is 8% for interest paid to banks or other financial institutions.
- (g) The rate is 10% for interest paid by industrial undertakings to financial institutions in Sweden.
- (h) No withholding tax applies to interest or royalties with respect to certain approved transactions.
- (i) The rate is 7.5% for interest paid to financial institutions.
- (j) In certain circumstances, the reduced rates do not apply to royalties for copyrights of literary or artistic works, including cinematographic films and films or tapes for radio or television broadcasting. Reference should be made to the applicable tax treaty.
- (k) The 10% rate applies to payments relating to patents, designs, models, plans, secret formulas or processes, and to industrial, commercial or scientific equipment or experience. The 15% rate applies to payments for trademarks and for copyrights of literary, artistic or scientific works.
- (l) Royalties approved under the Economic Expansion Incentives (Relief from Income Tax) Act are exempt.
- (m) This rate does not apply to royalties with respect to the operation of mines or quarries or the exploitation of natural resources. A contracting state may exempt or reduce the tax on industrial royalties in accordance with its domestic laws.
- (n) The 5% rate applies if the interest is received by a bank or similar financial institution.
- (o) The rate is 5% for technical fees.

- (p) The 5% rate applies to certain types of royalties.
- (q) Interest is exempt from tax if it is paid to the government of the other contracting state and if the activities giving rise to such interest are noncommercial in nature.
- (r) These are the withholding tax rates under a new treaty between Singapore and China, which was ratified on 18 September 2007 and is effective for income derived on or after 1 January 2008.
- (s) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (t) The treaty was ratified on 14 August 2007 and is effective for income derived on or after 1 January 2008.
- (u) The treaty was ratified on 5 October 2007 and is effective for income derived on or after 1 January 2008.
- (v) The treaty was ratified on 27 December 2007 and is effective for income derived on or after 1 January 2008.

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## SLOVAK REPUBLIC

(Country Code 421)

*The e-mail addresses for the persons listed below who are resident in the Slovak Republic are in the following standard format:*

*firstname.surname@sk.ey.com*

*The e-mail address for the person not resident in the Slovak Republic is listed below the respective person's name. For purposes of the e-mail addresses, accent marks are ignored.*

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*At the time of writing, legislation containing changes to the tax law was being prepared in the Slovak Republic. These changes to the tax law were expected to be effective from 1 January 2008. Because of the expected tax changes, readers should obtain updated information before engaging in transactions.*

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### **A. At a Glance**

Corporate Income Tax Rate (%)	19
Capital Gains Tax Rate (%)	19
Branch Tax Rate (%)	19
Withholding Tax (%) (a)	
Dividends	0
Interest	19 (b)

Royalties	19 (b)(c)
Income from Media	19 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The rates may be reduced by an applicable double tax treaty.
- (b) See Section B.
- (c) This tax applies to nonresidents only. For resident companies, royalties are included in taxable income subject to corporate tax.
- (d) This tax applies to income received by authors (individuals) for contributions to newspapers, radio and television. The withholding tax is imposed on 60% of the gross income.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Slovak (resident) companies are subject to corporate income tax on their worldwide income. Slovak companies are those incorporated or having their place of management in the Slovak Republic. Foreign (nonresident) companies are subject to corporate income tax only on their Slovak-source income, such as income attributable to a permanent establishment.

Under Slovak law, a permanent establishment is a fixed place or facility for nonresidents to carry out activities in the Slovak Republic. A permanent establishment includes an administrative location, branch, office, workshop, sales location, technical facility or location for research and extraction of natural resources. The fixed place or the facility is considered to be permanent if the activities are carried out continuously or repeatedly. In the case of one-off activities, the place or facility is considered to be permanent if the duration of the activities exceeds six months, either continuously or divided into 2 or more periods in the course of 12 consecutive calendar months. A building site, construction site or assembly works site (as described in the Commentary to Article 5, Paragraph 3 of the Organization for Economic Cooperation and Development [OECD] Model Tax Treaty) is regarded as a permanent establishment only if the duration of the activities exceeds six months. A permanent establishment also includes the activity of an agent who negotiates or enters into agreements on behalf of a nonresident company under a power of attorney.

**Rates of Corporate Tax.** The corporate income tax rate is 19%.

**Investment Aid.** Under the new Investment Aid Act, which is effective from 1 January 2008, companies may apply for a 100% tax reduction (full tax relief) for five consecutive tax years. The tax relief can be provided to newly established companies (new production) and also for existing companies (extension of existing production).

Other forms of state aid for investors include the following:

- Transfer of immovable assets by a state or municipality for a price lower than the market price;
- Cash grants on acquisitions of fixed assets;
- Cash grants on newly created jobs; and
- Cash grants on training.

Companies must meet the conditions under the Investment Aid Act and the European legislation to be granted the investment aid mentioned above. These conditions are summarized below.

*General Conditions.* The following are the general conditions for the granting of investment aid:

- Submission of an investment intent (detailed application containing a complete business plan with attachments) before the start of work on the project.
- Ability to cofinance the project (minimum 25%) through the companies' own resources or external financing (free of any investment aid).
- Realization of the project in a period of up to three years. This means that only costs incurred during the first three years are eligible for financing through investment aid. The project can be completed after more than three years, but only costs incurred during the initial three-year period are eligible.
- Meet all conditions within three calendar years from the issuance of the positive decision regarding the investment aid.
- The filling of all jobs within three years of completion of the project and maintenance of such jobs for a five-year period.
- The maintenance of the investment in the relevant region for a period of at least five years after the completion of the project.

*Specific Conditions.* Certain conditions vary according to the type of project. The following are the conditions for manufacturing projects:

- Acquisition of fixed assets totaling at least SKK 800 million (lower minimum thresholds apply in regions with high unemployment), of which at least 50% is covered by the company's own equity.
- Acquisition of new machinery for production purposes in an amount equal to at least 60% of the overall value of acquired assets. The machinery must be bought under market conditions, must not have been depreciated and must have been produced no more than three years before the acquisition.
- At least 80% of the revenue (sales) must be derived from the business activities stated in the investment intent.

The following are the conditions for technology centers:

- Acquisition of fixed assets of at least SKK 40 million, of which at least 50% is covered by the company's own equity; and
- At least 60% of the employees have a university degree.

The following are the conditions for shared service centers:

- Acquisition of fixed assets of at least SKK 35 million, of which at least 50% is covered by the company's own equity; and
- At least 30% of the employees have a university degree.

*Approval for the Aid.* No legal entitlement to investment aid exists. After the submission of the investment intent by the applicant, the Ministry of Economy and other providers of aid consider whether the applicant satisfies the general and specific conditions for granting of aid under the Investment Aid Act and European legislation. If the conditions are fulfilled, the Ministry of Economy prepares the official offer to the investor. The investor can officially begin the investment project on receipt of the offer from the Ministry of Economy and an official statement from the Ministry of Economy indicating that the project can begin. Following the offer, the investor must submit the investment aid application (formal request for investment aid, which may be in the form of an Excel spreadsheet with appendices). After the approval of the application by the Slovak government, the investor receives the decision on investment aid approval.



**Capital Gains.** Capital gains are subject to income tax at a rate of 19%.

**Administration.** The tax year is usually the calendar year. However, if a company informs the tax authorities in advance, it may use its accounting year as the tax year.

Tax returns for each tax year must be filed within three months after the end of the year. Extensions may be granted on a case-by-case basis up to a maximum of three months. An extension may be granted for a maximum of six months if the company received income from foreign sources.

In general, monthly or quarterly prepayments of tax are required, depending on the amount of tax liability for the preceding year.

**Dividends.** Profits distributed by companies to their shareholders are not subject to tax in the Slovak Republic. Transitional rules apply to dividends distributed out of profits realized before 2004 or paid out before 1 January 2005.

**Interest and Royalties.** Under Slovak law, interest and royalty payments satisfying the conditions contained in Council Directive No. 2003/49/EC are exempt from Slovak withholding tax.

**Foreign Tax Relief.** Under applicable double tax treaties, a foreign tax credit is available to Slovak residents for foreign tax paid on income earned abroad.

### **C. Determination of Trading Income**

**General.** Corporate tax is based on the statutory accounting profit as adjusted for certain items prescribed by the tax law.

Dividends are not included in the tax base.

Items that are specifically deductible for tax purposes include tax depreciation (see *Tax Depreciation* below) and certain expenses relating to health and safety at work and environmental protection.

Nondeductible items include the following:

- Entertainment and travel allowances in excess of the statutory limits;
- Penalties and fines, except for contractual penalties that have been paid;
- Additional fines for damage to the environment;
- Taxes paid on behalf of other taxpayers;
- Damages exceeding compensation received, unless the damage arose as a result of natural disaster, or it was caused by a person or persons unknown and this is confirmed by the police;
- Most reserves and provisions (see *Provisions* below); and
- Write-offs of debts, unless specific conditions are met.

**Inventories.** Inventories may be valued using the first-in, first-out (FIFO) or average-cost methods. Costs include all costs necessary to convert the inventory to its current condition and to transport it to its current location. Shortages and damages are not tax deductible, unless the damage resulted from a natural disaster, or it was caused by person or persons unknown and this is confirmed by the police.

**Provisions.** Reserves and provisions are generally not deductible, with certain exceptions specified by law (for example, reserves for untaken vacations and for preparation of financial statements and tax returns, and provisions with respect to receivables in bankruptcy proceedings).

Special rules apply to banks and insurance companies.

**Tax Depreciation.** Under the Income Tax Act, tangible assets are divided into four categories, each of which specifies a period (a specified number of years, which range from 4 to 20) over which all assets in the category are depreciated. In line with the Slovak Act on Accounting, intangible assets are depreciated depending on their actual useful life.

Tax depreciation may be calculated using either the straight-line method or the accelerated method. A company chooses the method on an asset-by-asset basis and, after it chooses a method, it cannot change it during the depreciation period.

**Relief for Losses.** Companies may carry forward losses and offset them against income in the five tax years following the tax year of the loss. If the tax period is shorter than 12 months (for example, if the company is liquidated or changes its financial year), the tax loss that would normally be deductible is fully deductible in that tax period.

A special tax regime may apply to losses incurred before 2004.

**Groups of Companies.** Slovak law does not contain any provisions regarding the taxation of groups in the Slovak Republic.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax	
Pharmaceutical products and books	10
Other	19
Social security contributions; imposed on monthly wages with monthly caps on wages ranging from approximately SKK 26,000 to SKK 75,000 for different types of social security contributions; contributions are deductible for employers; paid by	
Employer	35.2
Employee	13.4
Local taxes (tax on land, tax on buildings and apartments, and motor vehicle tax); rates vary depending on location	Various

#### E. Transfer Pricing

If the price agreed between related parties differs from the usual market price and if this difference cannot be satisfactorily justified, the tax authorities may adjust the tax base to reflect the usual market price.

The transfer-pricing rules apply to personally or economically related persons, as well as to other related persons.

Persons are economically or personally related if one person participates in the ownership, control, or administration of another person, if such persons are under the control or administration of the same person, or if the same person has a direct or indirect equity interest in the persons. Participation in ownership or control exists if the direct or indirect participation in the basic capital of, or voting rights in, one company by another company is higher than 25%. Participation in the administration is a relationship between members of statutory bodies or supervisory boards of the companies. Other relationships are defined as relationships created for the purpose of decreasing the tax base or increasing the tax loss.

Under the Slovak transfer-pricing measures, an advance ruling on the transfer-pricing method may be obtained through an agreement with the tax authorities. The Slovak transfer-pricing measures specify the acceptable transfer-pricing methods, which conform to the methods included in the Organization for Economic Cooperation and Development (OECD) Transfer-Pricing Guidelines.

## F. Treaty Withholding Tax Rates

The Slovak Republic honors the bilateral tax treaties that were concluded by the former Czechoslovakia. The withholding rates under these treaties, and the treaties entered into by the Slovak Republic are listed in the table below.

In general, treaty rates apply if the recipient is the beneficial owner of the income. To obtain the benefit of the reduced treaty rates, the beneficial owner must provide a tax residency certificate.

Dividends are exempt from tax. Consequently, the treaty rates do not apply to dividends paid by Slovak companies.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Australia	15	10	10
Austria	10	0	0/5 (l)
Belarus	10/15 (d)	0/10 (c)	5/10 (l)(m)
Belgium	5/15 (d)	0/10 (s)	5
Bosnia- Herzegovina	5/15 (d)	0	10
Brazil	15	0/10/15 (c)(k)	15/25 (p)
Bulgaria	10	0/10 (c)	10
Canada	5/15 (b)	0/10 (c)	0/10 (l)
China	10	0/10 (c)	10
Croatia	5/10 (d)	10	10
Cyprus	10	0/10 (c)	0/5 (l)
Czech Republic	5/15 (a)	0	10
Denmark	15	0	0/5 (l)
Egypt (bb)	5/15 (d)	0/12 (c)	15
Estonia	10	0/10 (c)	10
Finland	5/15 (d)	0	0/1/5/10 (l)(w)
France	10	0	0/5 (l)
Germany	5/15 (d)(e)	0	5
Greece	– (x)	0/10 (c)	0/10 (l)
Hungary	5/15 (d)	0	10
Iceland	5/10 (d)	0	10
India	15/25 (d)	0/15 (c)(s)	30 (f)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Indonesia	10	0/10 (c)	10/15 (l)
Ireland	0/10 (d)	0	0/10 (l)
Israel	5/10 (b)	2/5/10 (t)	5
Italy	15	0	0/5 (l)
Japan	10/15 (g)	0/10 (c)	0/10 (l)
Korea	5/10 (d)	0/10 (y)	0/10 (l)
Latvia	10	0/10 (c)	10
Lithuania	10	0/10 (c)	10
Luxembourg	5/15 (d)	0	0/10 (l)
Macedonia	5/15 (d)	0	10
Malta	5 (u)	0	5
Mexico	0	0/10 (c)	10
Moldova	5/15 (d)	10	10
Mongolia (z)	0	0	0
Netherlands	0/10 (d)	0	5
Nigeria	12.5/15 (b)	0/15 (c)	10
Norway	5/15 (d)	0	0/5 (l)
Poland	5/10 (n)	0/10 (c)	5
Portugal	10/15 (d)	10	10
Romania	10	0/10 (c)	10/15 (r)
Russian Federation	10	0	10
Singapore	5/10 (b)	0	10
Slovenia	5/15 (d)	10	10
South Africa	5/15 (d)	0	10
Spain	5/15 (d)	0	0/5 (q)
Sri Lanka	0/6/15 (h)	0/10 (o)	0/10 (i)
Sweden	0/10 (d)	0	0/5 (l)
Switzerland	5/15 (d)	0/10 (j)	0/10 (l)
Tunisia	10/15 (d)	0/12 (c)	5/15 (l)
Turkey	5/10 (d)	0/10 (c)	10
Turkmenistan	10	0/10 (c)	10
Ukraine	10	10	10
United Kingdom	5/15 (v)	0	0/10 (l)
United States	5/15 (b)	0	0/10 (l)
Uzbekistan	10	10	10
Yugoslavia	5/15 (d)	10	10
Nontreaty countries	0	19 (aa)	19 (aa)

- (a) The 5% rate applies to dividends paid to a company that owns more than 10% of the capital of the payer of the dividends.
- (b) The lower rate applies if the beneficial owner is a company that controls at least 10% of the voting power of the payer.
- (c) The lower rate applies to interest on government loans.
- (d) The lower rate applies if the recipient is a company that directly holds at least 25% of the capital of the payer of the dividends.
- (e) If the corporate tax rate in a contracting state on distributed profits is 20% lower than the corporate tax rate on undistributed profits, the withholding tax rate may be increased to 25%.
- (f) This rate also applies to fees for technical services.
- (g) The 10% rate applies if the recipient is a company that owns at least 25% of the voting shares of the payer during the six-month period immediately preceding the date of payment of the dividends.
- (h) The 15% applies to dividends paid by Slovak companies to Sri Lankan recipients. The 0% rate applies to dividends paid by Sri Lankan companies to Slovakian recipients, except for Sri Lankan income tax and additional tax under Sri Lanka's tax law. A maximum tax rate of 6% applies to the additional tax.

- (i) The 0% rate applies to royalties relating to copyrights and films derived from sources within one of the contracting states.
- (j) The 0% rate applies to interest paid on bank loans or on loans for the purchase of goods or industrial, trade and scientific equipment. The 10% rate applies to other interest payments.
- (k) The 10% applies if the recipient is the beneficial owner of the interest and if the interest is paid on a loan granted by a bank for a period of at least 10 years in connection with the sale of industrial equipment or the installation or furnishing of scientific units or public works.
- (l) The lower rate applies to cultural royalties, which are defined as the right to use copyrights of literary, artistic or scientific works, including cinematographic films.
- (m) The higher rate also applies to payments for the right to use transport vehicles.
- (n) The lower rate applies if the recipient is a company (other than a general partnership) directly holding at least 20% of the capital of the payer.
- (o) The 0% rate applies to interest paid to banking institutions, interest paid on government loans and interest paid by the government or other state institutions.
- (p) The 25% rate applies to royalties paid for trademarks.
- (q) The 5% rate applies if the royalties are taxable in Spain. Otherwise, the rate is determined in accordance with the law of the source country. The 0% rate applies to cultural royalties, except for royalties for films.
- (r) The lower rate applies to industrial royalties.
- (s) The lower rate applies to the following types of interest:
  - Interest paid on commercial debt claims (including debt claims represented by commercial paper) that result from deferred payments for goods, merchandise or services supplied by an enterprise;
  - Interest paid on loans made, guaranteed or insured by public entities that are intended to promote exports;
  - Interest paid on current accounts or loans that are not represented by bearer instruments between banks or public credit institutions of the contracting states; and
  - Interest paid to the other contracting state, public subdivision or local authority.
- (t) The 2% rate applies to interest on government loans. The 5% rate applies to interest paid to financial institutions.
- (u) The tax in Malta on dividends may not exceed the tax on the profits out of which the dividends are paid.
- (v) The 5% rate applies to dividends paid to a company that owns more than 25% of the voting power of the payer of the dividends.
- (w) The 1% rate applies to payments under a financial lease of equipment. The 5% applies to payments under an operating lease of equipment, as well as to payments for the right to use cinematographic films and software for personal computers.
- (x) Dividends may be taxed in both contracting states in accordance with the domestic laws in the states.
- (y) The 0% rate applies to interest on government loans and on loans for the purchase of goods or industrial, trade and scientific equipment.
- (z) These rates are based on a multilateral treaty, which the former Czechoslovakia entered into with the other members of the Council for Mutual Economic Assistance (Comecon or CMEA).
- (aa) See Section B.
- (bb) This treaty has been signed, but it is not yet in effect.

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## SLOVENIA

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**A. At a Glance**

Corporate Income Tax Rate (%)	22 (a)
Capital Gains Tax Rate (%)	22 (a)
Branch Tax Rate (%)	22 (a)
Withholding Tax (%)	
Dividends	15 (b)
Interest	15 (b)
Royalties from Patents, Know-how, etc.	15 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (c)

(a) The corporate income tax rate will decrease to 20% in 2010.

(b) This tax applies to payments to residents and nonresidents.

(c) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** In general, all companies resident in Slovenia are subject to tax on their worldwide income (but see *Foreign Tax Relief* below). A company is resident in Slovenia if it has its legal seat or effective place of management in Slovenia. Nonresident companies are subject to tax on their Slovenian-source income only (income derived from or through a permanent establishment and other Slovenian-source income subject to withholding tax).

The definition of a “permanent establishment” of a nonresident company in Slovenia generally follows the definition in the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and Capital 2005.

**Rates of Corporate Income Tax.** The standard corporate income tax rate is 22%. The corporate income tax rate will decrease to 20% in 2010.

Investment funds that distribute 90% of their operating profits for the preceding tax year by 30 November of the current tax year are taxed at a rate of 0%.

**Capital Gains.** Fifty percent of capital gains is exempt from tax if certain conditions are met. The other 50% of capital gains is treated as ordinary business income and is subject to tax at the regular corporate rate. The same principle applies to capital losses (only 50% of capital losses is deductible for tax purposes).

**Administration.** The tax year is the calendar year. However, a company may select its financial year as its tax year if the selected year does not exceed a period of 12 months and if it informs the tax authorities regarding its selection of the tax year. The selected tax year may not be changed for a period of three years.

Annual tax returns must be filed within three months (four months for consolidated returns) after the end of the tax year.

Companies must make advance payments of corporate income tax. Monthly advance payments of corporate income tax are required if the total amount of the advance payments exceeds €400, based on the tax calculated in the tax return for the preceding tax year. Companies must make quarterly advance payments if the total amount of the advance payments is less than €400, based on the tax calculated in the tax return for the preceding tax year. Advance payments of corporate income tax are due on the 10th day of the month following the month for which tax is due. The balance of tax due must be paid within 30 days after the annual tax return is filed with the tax authorities. If the total amount of advance payments of corporate income tax exceeds the amount of tax due for the year, the company can request a refund.

**Dividends.** In principle, dividends paid to residents and nonresidents are subject to withholding tax at a rate of 15%. The tax does not apply to dividends paid to a resident or to a permanent establishment of a nonresident if the dividend recipient informs the dividend payer of its tax number.

Measures implementing the European Union (EU) Parent-Subsidiary Directive are in effect in Slovenia. Under these measures, dividend distributions are exempt from withholding tax if all of the following conditions are satisfied:

- The recipient of the dividends owns at least 15% (for 2008; the percentage will decrease to 10% for 2009) of the equity capital or voting power of the payer of the dividends;
- The duration of the recipient's ownership in the payer is at least two years; and
- The recipient of dividends is a taxable company that has one of the prescribed legal forms, is a resident of an EU member state and is a taxpayer for one of the taxes for which the common system of taxation applies.

Dividend distributions received by a Slovenian taxpayer are exempt from tax if the payer of the dividends is a taxable person not resident in a non-EU country with a more favorable tax environment (in general, the average nominal tax rate must be at least 12.5%) that is included on the list published by the Ministry of Finance.

**Foreign Tax Relief.** Income tax paid abroad can be credited against the final tax liability of a company if the income on which the tax has been paid abroad is included in the tax base. The foreign tax credit may not exceed the lower of the amount of foreign tax on foreign income that was paid or the amount of tax that would have been paid under Slovenian law on the foreign income if the credit had not been granted. To claim the tax credit, the taxpayer must submit appropriate documentation together with the tax return.

### **C. Determination of Trading Income**

**General.** Taxable income is based on the profits reported in the annual financial statements prepared in accordance with International Financial Reporting Standards (IFRS) or Slovenian accounting standards, which generally follow IFRS. For tax purposes, profits are adjusted, primarily for nondeductible expenses.

In general, only those expenses that are directly required for the generation of taxable revenues are allowed as deductible expenses.

The law specifies that certain expenses are not deductible, including the following:

- Incentives paid to the management board and to the board of directors;
- Pecuniary penalties (fines paid to government agencies);
- Donations; and
- Bribes.

Only 50% of entertainment expenses and fees paid to the supervisory board is deductible for tax purposes.

Interest on loans to related entities is deductible up to the amount computed by applying the acknowledged interest rate at the time of the loan approval. The Ministry of Finance publishes the acknowledged interest rate.

A deduction for bad debts can be claimed if specified conditions are met.

**Inventories.** Inventories may be valued using any of the methods prescribed by the applicable accounting standards. Permissible methods include first-in, first-out (FIFO), average cost and other methods. The last-in, first-out (LIFO) method is not allowed. Inventories are measured at the lower of cost or net realizable value.

**Provisions.** The following provisions are deductible for tax purposes up to an amount equal to 50% of the provisions established in accordance with the accounting standards:

- Guarantees given;
- Reorganizations;
- Expected losses from doubtful contracts;
- Pensions;
- Severance pay; and
- Anniversary awards.

Specific provisions established by a bank for specific risks are deductible up to the amount prescribed by the Banking Act. Technical provisions that insurance companies are required to establish under the law are deductible up to the amount prescribed by the Insurance Companies Act. Special provisions that are required for stockbrokerage companies are deductible up to the amount prescribed by the Securities Market Act.

**Revaluation Expenses.** In general, subject to special conditions and limitations, revaluations of the following items are deductible for tax purposes:

- Claims;
- Financial assets and financial instruments measured at fair value based on profits and losses;
- Goodwill; and
- Debts, receivables, investments and cash receivables, provided the revaluations are based on changes in the exchange rate.

**Tax Depreciation.** Depreciation calculated using the straight-line method is deductible for tax purposes. The tax law sets the maximum depreciation rates. The following are some of the prescribed maximum straight-line depreciation rates.



<b>Assets</b>	<b>Rate (%)</b>
Buildings and structures, and investment property	3
Equipment, vehicles and machinery	20
Parts of investment property and parts of buildings	6
R&D equipment and parts of other equipment	33.3
Computers and computer hardware	50
Other intangible fixed assets	10

**Tax Relief for Research and Development Expenditure.** Tax relief is available for research and development (R&D) expenditure.

The tax base may be decreased by 20% of the expenditure incurred in R&D activities. Additional relief of up to 20% is available for R&D activities in less-developed regions.

The unused part of the tax relief may be carried forward for five tax years.

**Hidden Profit Distributions.** Hidden profit distributions are non-deductible expenditures and subject to withholding tax as deemed dividends. The following are treated as hidden profit distributions:

- Providing assets or performing services, including the discharge of debts, without consideration or at a price that is lower than the comparable market price;
- Payments for the purchase of assets and services at a price that is higher than the comparable market prices;
- Payments for assets that were not transferred or for services that were not rendered;
- Interest on loans granted at an interest rate that differs from the acknowledged interest rate; and
- Interest on loans exceeding the thin-capitalization limit (see Section E).

**Relief for Losses.** Assessed tax losses may be carried forward for an unlimited time period. The right to carry forward tax losses is lost if the ownership of share capital or voting rights changes by more than 50% during a tax year, as compared to the beginning of the tax year and if the taxpayer did not conduct any business activity for two years or the business activity was significantly changed in the two-year periods before or after the change of ownership.

Loss carrybacks are not allowed.

**Groups of Companies.** The formation of groups of companies for tax purposes is not allowed.

## **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax	
Standard rate	20%
Reduced rate	8.5%
Transfer tax on immovable property	2%
Tax on sales of motor vehicles	1% to 13%
Tax on boats; amount of tax depends on the length of the boat and the power of engine; minimum tax	€22.5

<b>Nature of Tax</b>	<b>Rate</b>
Tax on insurance premiums	6.5%
Land use tax; payable by users of land; the rates are fixed by the municipalities, taking into account various criteria, such as infrastructure, geographical position, the purpose for which the land is used and the size of the land's surface	Various
Social security contributions, on monthly salary	
Health insurance, paid by	
Employer	6.56%
Employee	6.36%
Pension and disability, paid by	
Employer	8.85%
Employee	15.5%
Unemployment insurance, paid by	
Employer	0.06%
Employee	0.14%
Maternity benefits, paid by	
Employer	0.1%
Employee	0.1%
Workers' compensation insurance, paid by employer	0.53%
Tax on gross salaries, paid by employer; imposed at progressive rates on gross salaries	
€0 to €688.53	0%
€688.53 to €1,669.17	1.1%
€1,669.17 to €3,129.69	2.3%
Exceeding €3,129.69	4.4%

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** Effective from 1 January 2007, the official Slovenian currency is the euro (€). The exchange rate at which the conversion from the Slovenian tolar (SIT) to the euro took place was €1 = SIT 239.640.

Legal entities with their head office in Slovenia and subsidiaries of foreign commercial companies that are registered in the Court Registry in Slovenia may maintain foreign-currency accounts or foreign-currency deposit accounts at authorized banks in Slovenia. Slovenian and foreign enterprises and their subsidiaries may freely perform one-sided transfers of property to or from Slovenia. Profits may be freely transferred abroad in foreign currency.

Resident enterprises may obtain loans from nonresident enterprises in their own name and for their own account. They are required to report all loan transactions with nonresident enterprises to the Bank of Slovenia. For this purpose, loan transactions include the following: pledges of real estate and other security; purchases by nonresidents of accounts receivable arising from transactions between resident enterprises; purchases by residents of accounts receivable arising from transactions between nonresident enterprises; and certain other transactions between resident and nonresident enterprises if the economic purpose of the transaction is effectively the granting of a loan.

**Transfer Pricing.** Transfer prices are determined by referring to market prices of the same or comparable assets or services charged between unrelated parties (comparable market prices). Comparable market prices are determined by one of the methods prescribed by the OECD guidelines.

A resident or nonresident and a foreign legal entity or foreign partnership are deemed to be related parties if any of the following circumstances exist:

- The taxable person directly or indirectly holds 25% or more of the value or number of shares or equity holdings, or control over management or supervision or voting rights of the foreign person or controls the foreign person on the basis of contract or transaction terms that differ from terms that are or would in the same or comparable circumstances be agreed to between unrelated parties;
- The foreign person directly or indirectly holds 25% or more of the value or number of shares or equity holdings or control over management or supervision or voting rights of a taxable person, or controls the taxable person on the basis of contract or transaction terms that differ from terms that are or would in the same or comparable circumstances be agreed to between unrelated parties;
- The same person at the same time, directly or indirectly holds 25% or more of the value or number of shares or holdings or participates in the management or supervision of the taxable person and the foreign person or two taxable persons or they are under the same person's control on the basis of contract or transaction terms that differ from terms that are or would in the same or comparable circumstances be agreed to between unrelated parties; or
- The same natural persons or members of their families directly or indirectly hold 25% or more of the value or number of shares or holdings or control over the management or supervision of the taxable person and the foreign person or two resident entities or they are under their control on the basis of contract or transaction terms that differ from terms that are or would in the same or comparable circumstances be achieved between unrelated parties.

The rules on related parties for resident companies differ from the rules for resident and nonresident related parties. The transfer-pricing requirements imposed on transactions between two residents are not as strict as those applicable to transactions between residents and nonresidents.

In determining the revenues and expenses arising from transactions between resident related parties, the tax base is not increased or decreased if the increase or decrease of the tax base of one taxable person would equal the increase or decrease in the tax base of the other taxable person, and, consequently, not cause an increase in the total amount of tax assessed.

Taxpayers must maintain transfer-pricing documentation continuously. The transfer-pricing documentation requirements are based on the masterfile concept. Under this concept, which is recommended by the European Community (EC) Council and the EU Joint Transfer Pricing Forum, the transfer-pricing documentation consists of a general part and a country-specific part. A prescribed

abstract of the documentation must be enclosed with the tax return when the tax return is filed with the tax authorities. The transfer-pricing documentation must be archived for a period of 10 years after the year to which it relates.

**Debt-to-Equity Rules.** Interest on loans from shareholders, who directly or indirectly at any time during a tax year hold at least 25% of capital or voting rights of the taxable person (with the exception of banks and insurance companies as borrowers) is deductible only if it is attributable to the part of the loan that does not exceed a specified multiple of the value of the share capital owned (debt-to-equity ratio). The following are the applicable debt-to-equity ratios.

Years	Debt-to-Equity Ratio
2008 through 2010	6:1
2011	5:1
2012 and future years	4:1

## F. Treaty Withholding Tax Rates

Most of Slovenia's double tax treaties follow the OECD model convention. The following table shows the withholding tax rates under Slovenia's tax treaties.

	Dividends %	Interest %	Royalties %
Austria	5/15 (a)	5	0/10 (m)
Belgium	5/15 (a)	10	5
Bosnia-Herzegovina	5/10 (a)	7	5
Bulgaria	5/10	5	5/10 (c)
Canada	5/15 (g)	0/10 (l)	10
China	5	10	10
Croatia	5	0/5	5
Cyprus (f)	10	10	10
Czech Republic	5/15 (a)	0/5 (b)	10
Denmark	5/15 (a)	5	5
Estonia	5/15 (a)	0/10 (b)	10
Finland	5/15 (a)	0/5 (b)	5
France	0/15 (d)	5 (b)	5
Germany	5/15 (a)	0/5 (l)	5
Greece	10	10	10
Hungary	5/15 (a)	0/5 (l)	5
India	5/15	10	10
Ireland	5/15 (a)	0/5 (b)	5
Italy (e)(f)	10	10	10
Korea (South)	5/15 (a)	5	5
Latvia	5/15 (a)	0/10 (b)	10
Lithuania	5/15 (a)	0/10 (b)	10
Luxembourg	5/15 (a)	0/5 (b)	5
Macedonia	5/15 (a)	10	10
Malta	5/15 (h)	5	5
Moldova	5/10	5	5
Netherlands	5/15 (o)	0/5 (b)	5
Norway (f)	15	0	10
Poland	5/15 (a)	0/10 (b)	10
Portugal	5/15 (a)	0/10 (b)	5
Romania	5	0/5 (b)	5
Russian Federation	10	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Serbia and Montenegro (n)	5/10 (a)	0/10 (b)	5/10 (i)
Slovak Republic	5/15	10	10
Spain	5/15 (a)	0/5 (b)	5
Sweden (f)	5/15 (a)	0	0
Switzerland	5/15 (a)	5	5
Thailand	10	0/10/15 (b)(j)	10/15 (k)
Turkey	10	0/10 (b)	10
United Kingdom (f)	5/15 (a)	10	10
United States	5/15 (a)	0/5	5
Nontreaty countries	15	15	15

- (a) The lower rate applies if the recipient of the dividends is a company that holds at least 25% of the capital of the payer of the dividends.
- (b) The 0% rate applies to interest paid to the government including local authorities or the national bank. In certain treaties, the 0% rate applies to interest paid to national export companies and other institutions, subject to additional conditions.
- (c) The lower rate applies to royalties paid for the following: the use of, or the right to use, copyrights of literary, artistic or scientific works (not including cinematographic works); and royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (d) The 0% rate applies if the recipient of the dividends is a company that holds at least 20% of the capital of the payer of the dividends.
- (e) Slovenia has signed a new tax treaty with Italy, but the treaty has not yet been ratified. The withholding tax rates under the treaty between the former Yugoslavia and Italy, which Slovenia is honoring, are shown in the above table. Under the new treaty, the following withholding tax rates will apply: dividends 5% and 15%; interest 10%; and royalties 5%.
- (f) Slovenia is honoring the tax treaties between the former Yugoslavia and these countries.
- (g) For dividends paid by Slovenian companies, the 5% rate applies if the recipient of dividends holds at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends paid by Slovenian companies. For dividends paid by Canadian companies, the 5% rate applies if the recipient of dividends holds at least 10% of the voting power of the payer of the dividends. The 15% rate applies to other dividends paid by Canadian companies.
- (h) For dividends paid by Slovenian companies, the 5% rate applies if the recipient of dividends owns at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends paid by Slovenian companies. For dividends paid by Maltese companies to Slovenian resident beneficiaries, the withholding tax rate may not exceed the tax imposed on the profits out of which dividends are paid.
- (i) The 5% rate applies to royalties for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic works, and films or tapes used for radio or television broadcasting.
- (j) The 10% rate applies to interest paid to financial institutions, including insurance companies.
- (k) The 10% rate applies to royalties paid for the following: the use of, or the right to use, copyrights of literary or artistic works, including motion pictures, live broadcasting, films and tapes; other means for use or reproduction in connection with radio and television broadcasting; and the use of, or right to use, industrial, commercial, or scientific equipment.
- (l) Subject to additional conditions, the 0% rate applies to the following: interest paid with respect to indebtedness of the government or local authorities; interest paid to an entity that was established and operates exclusively to administer or provide benefits under pension, retirement or other employee benefit plans. Interest arising in Slovenia (Canada) and paid to a resident of Canada (Slovenia) is taxable only in Canada (Slovenia) if it is paid with respect to loans made, guaranteed or insured by the Export Development Corporation (Slovenian Export Company).
- (m) The 10% rate applies if the recipient of royalties owns more than 25% of the capital or voting rights of the payer of the royalties.
- (n) The tax treaty between Slovenia and the former Union of Serbia and Montenegro is expected to continue to apply to the republics of Serbia and Montenegro.
- (o) The 5% rate applies if the recipient of the dividends is a company that holds at least 10% of the capital of the payer of the dividends.

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*Certain amendments to the tax law have been proposed, but not yet enacted. Because of the expected changes to the tax law, readers should obtain updated information before engaging in transactions.*

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**A. At a Glance**

Corporate Income Tax Rate (%)	29 (a)
Capital Gains Tax Rate (%)	14.5 (b)
Distributed Dividends Tax (%)	10 (c)
Branch Tax Rate (%)	34 (a)
Withholding Tax (%)	
Dividends	0
Interest	0
Royalties from Patents, Know-how, etc.	12 (d)
Branch Remittance Tax	0

## Net Operating Losses (Years)

Carryback	0
Carryforward	Unlimited (e)

- (a) The mining income of gold mining companies is taxed under a special formula. For gold mining companies that elect exemption from secondary tax on companies (STC; see footnote [c] below), nonmining income is taxed at a rate of 37%. For gold mining companies that do not elect exemption from STC, nonmining income is taxed at a rate of 29% and any dividends declared by the company are subject to STC at a rate of 10%. Special rules apply to life insurance companies, petroleum and gas producers and small business corporations. See Section B.
- (b) This is the effective rate. See Section B.
- (c) This is the secondary tax on companies (STC), which is levied on dividends declared net of dividends received. The STC is imposed on the distributing company. It is not a withholding tax. The STC does not apply to branches subject to the 34% company tax rate or nonresident companies, or to the mining income of oil and gas producers. Gold mining companies may elect exemption from STC. See Section B.
- (d) This withholding tax applies to nonresidents.
- (e) See Section C.

## B. Taxes on Corporate Income and Gains

**Company Tax.** A residence-based tax system applies in South Africa. Companies are considered to be resident in South Africa if they are incorporated or have their place of effective management in South Africa.

South African-resident companies are taxed on their worldwide income.

Under complex look-through rules, the foreign operating income of nonresident subsidiaries derived from “non-business establishment” operations in foreign countries is taxed in the hands of the immediately cross-border South African-resident parent company on an accrual basis (see the discussion on controlled foreign companies [CFCs] in Section E). The income of nonresident subsidiaries with business establishments in foreign countries is exempt from the look-through rules. Dividends paid by foreign companies are taxable unless the shareholding of the South African-resident recipient is 20% or more (see the discussion of foreign dividends in *Dividends* below).

Nonresident companies are taxed on their South African-source income only. Income is considered to be from a South African source if its originating cause is located in South Africa.

**Tax Rates.** The basic corporate tax rate is 29%. Branch profits tax at a rate of 34% is imposed on South African branches of nonresident companies. The 29% rate applies to South African-source profits that are not earned through a branch.

In addition, a secondary tax on companies (STC) is levied on South African-resident companies at a rate of 10% on dividends declared net of dividends received. Branches subject to the 34% tax rate and nonresident companies do not pay STC. Oil and gas producers under existing leases are exempt from STC on dividends distributed out of mining income. New entrants are subject to STC at a reduced rate of 5%. Gold mining companies may elect exemption from STC in their formula taxation.

The maximum effective rate of company tax and STC combined is 36.8%. This rate applies to companies that distribute all of their after-tax profits as dividends.



The following are significant features of the STC:

- STC is imposed on the company, not on the shareholders, and is regarded as a tax on income.
- STC is payable regardless of whether the company is liable for normal company tax in the relevant year.
- The following dividends received are deductible in computing the amount of dividends declared that are subject to STC:
  - All local dividends that were subject to STC in the company from which they were received.
  - Foreign dividends that are exempt from income tax on the basis that the underlying profits are taxed on a look-through basis.
- Multiple taxation of profits passing up a chain of companies is avoided by the mechanism referred to in the preceding bullet. Consequently, STC is effectively imposed on the distribution of operating profits and interest income.
- Exemptions from STC apply to scrip dividends and dividends distributed by certain tax-exempt companies, property unit trusts and companies in liquidation, and to listed shares distributed in an approved unbundling of a corporate structure.
- Exemption from STC may also be elected by a distributing company if all of the following conditions are satisfied:
  - The recipient of the dividends is a company that is part of the same group of companies as the payer of the dividends (companies are in a group if a common parent holds at least 70% of the subsidiary companies).
  - The dividends are derived out of profits earned by the payer of the dividends during a period when the company and the shareholder were part of the same group of companies. If a new company introduced into a group is founded solely by companies within that group, it is deemed to have been in existence for the same period as its founders. In effect, this means that the satisfaction of the condition for STC group relief requiring profits to have been earned while the distributing company was a member of the group is not disturbed by the introduction of an intermediate company as shareholder. The recipient company would in turn be liable for STC on the onward declaration of the amount concerned as a dividend.
  - The company declaring the dividend elects the exemption by submitting the election in a form prescribed by the Commissioner of Inland Revenue no later than the day on which the STC would otherwise be due.

This exemption should not be elected if the subsidiary had in turn received dividends subject to STC because the credit available for that lower-tier STC would then not be used in that cycle (the period beginning on the day after the date on which the most recent dividend was declared and ending on the date on which the next dividend is declared) at any level of distribution.

- Payment of STC is due on the last of the month following the month in which a dividend is declared.
- Antiavoidance measures prevent, among other actions, the withdrawal of profits through loans. These loans are deemed to be dividends for purposes of STC. However, certain types of loans are not subject to the antiavoidance measures, such as loans between subsidiary and group holding companies and between fellow subsidiaries, provided the loan proceeds are used in South Africa.

**Special Types of Companies.** Small business corporations (SBCs) are taxed at a rate of 10% on their first R 250,000 of taxable income and 29% on taxable income exceeding that amount. To qualify as an SBC, a company must satisfy the following requirements:

- Its gross income for the year must not exceed R 14 million;
- Its shares must be held by individuals who do not hold interests in other companies; and
- Its total personal service and investment income must not exceed 20% of its gross income.

Gold mining companies may elect to have their mining income taxed under one of two formulas. One of these formulas includes the STC while the other formula does not include it. For gold mining companies that elect exemption from STC, nonmining income is taxed at a rate of 37%. For gold mining companies that do not elect exemption from STC, nonmining income is taxed at a rate of 29% and any dividends declared by the company are subject to STC at a rate of 10%.

Petroleum and gas production is taxed in accordance with the usual provisions of the Income Tax Act, as modified by a special schedule applicable to prospecting and production expenses and to farm-ins. A fiscal stability regime can be agreed to with the Minister of Finance. The rate of tax is capped at a maximum of 29%.

Life assurance companies are subject to special rules that separate the taxation of policyholders' and corporate funds and apply different tax rates to such items.

**Capital Gains.** Capital gains are subject to capital gains tax (CGT) at an effective rate of 14.5%.

Resident companies are subject to CGT on capital gains derived from disposals of worldwide tangible and intangible assets.

Nonresidents are subject to CGT on capital gains derived from disposals of fixed property and interests in fixed property located in South Africa, and assets of a permanent establishment located in South Africa. An interest in immovable property includes a direct or indirect interest of at least 20% in a company if, at the time of disposal of the interest, 80% or more of the value of the net assets of the company is attributable to immovable property (land and buildings) located in South Africa.

A capital gain is equal to the amount by which the disposal proceeds for an asset exceed the base cost of the asset. A capital loss arises if the base cost exceeds the disposal proceeds. Capital losses may offset capital gains, and regular income losses may offset net capital gains. However, capital losses may not offset regular income.

The base cost for an acquired asset includes the sum of the following: the amount actually incurred to acquire the asset; cost of the valuation of the asset for the purposes of determining the capital gain or loss; expenditure directly related to the acquisition or disposal of the asset, such as transfer costs, advertising costs, costs of moving the asset from one location to another and cost of installation; expenditure incurred to establish, maintain or defend the legal title to, or right in, the asset; and expenditure on improvement costs. The base cost is reduced by any amounts that have

been allowed as income tax deductions. It is also reduced by the amounts of the following types of expenditure if such expenditure was originally included in the base cost: expenditure that is recoverable or recovered; amounts paid by another person; and amounts that have not been paid and are not due in the tax year.

Inflation indexation of the base cost is not allowed.

Special rules apply to the base cost valuation of a “pre-valuation date asset,” which is an asset acquired before 1 October 2001 and still held on 1 October 2001. Subject to loss limitation rules, in principle, a taxpayer may elect to use the market value of such asset on 1 October 2001 as the base cost of the asset or, alternatively, it may use a time-apportionment basis, which is determined by a formula. If the taxpayer elects to use the market value of the asset, the asset must have been valued before 30 September 2004. In addition, if the market value of the asset exceeds R 10 million (or R 1 million in the case of an intangible asset), or if the asset is an unlisted share in a company and the value of all of the shares held by the person in the company is more than R 10 million, the taxpayer must submit proof of the valuation with its first tax return submitted after the valuation.

A disposal is defined as an event that results in the creation, variation or extinction of an asset. It includes the transfer of ownership of an asset, the destruction of an asset and the distribution of an asset by a company to a shareholder. For CGT purposes, a company does not dispose of assets when it issues shares or when it grants an option to acquire a share or debenture in the company.

The proceeds from the disposal of an asset by a taxpayer are equal to the amount received by, or accrued to, the taxpayer as a result of the disposal. The proceeds from the disposal are reduced by any amount that is included in the taxpayer’s taxable income for income tax purposes.

If a company makes a distribution of an asset to a shareholder as a dividend, the company is deemed to have disposed of the asset for proceeds equal to the asset’s market value.

A liquidation dividend is effectively treated as proceeds from the disposal of shares.

Rollover relief is available in certain circumstances including destruction of assets and scrapping of assets.

All related-party transactions are deemed to occur at market value, and restrictions are imposed on the claiming of losses incurred in such transactions.

Corporate emigration, which occurs when the effective management of the company is moved outside South Africa, triggers a deemed disposal at market value of the assets of the company.

Disposals of equity shares in foreign companies to nonresidents are exempt from CGT if the disposing party has held at least 20% of the equity in the foreign company for at least 18 months.

**Administration.** The tax year for a company is its financial year. A company must file its annual tax return in which it calculates its taxable income and capital gains, together with a copy of its audited financial statements, within 60 days after the end of its finan-

cial year. Extensions of up to 12 months after the end of the financial year are usually granted. No payment is made with the annual return.

The tax authorities issue an official tax assessment based on the annual return. The company must pay the balance of tax due after deduction of provisional payments within a specified period after receipt of the assessment.

Companies must pay provisional tax in two installments during their tax year. The installments must be paid by the end of the sixth month of the tax year and by the end of the tax year. A third (“topping up”) payment may be made within six months after the end of the tax year. If this payment is not made and if there is an underpayment of tax, interest is charged from the due date of the payment.

The Inland Revenue is in the process of introducing an e-filing system, which will allow provisional payments and tax returns to be submitted electronically.

### **Dividends**

*South African-Source Dividends.* South African-source dividends are exempt in the hands of the recipients and, accordingly, recipients may not deduct expenses relating to the earning of the dividends, such as interest and other expenses incurred on the acquisition of their shares. In general, South African-source dividends are dividends paid by South African companies.

*Foreign Dividends.* Certain foreign dividends accruing to or received by South African residents are taxable and, accordingly, expenses incurred in earning such dividends are deductible. However, the deduction of these expenses is limited to the amount of taxable foreign dividends included in the gross income of the resident. Foreign dividends are dividends paid by nonresident companies or out of foreign profits of resident companies that were previously considered to be nonresident.

A South African resident (company or individual) holding 20% or more of the equity share capital of a nonresident company is exempt from tax on all dividends (including those on preferred shares) received from the nonresident.

Recipients of dividends on shareholdings of less than 20% are taxed on the actual amount received or on the amount, net of withholding tax, subject to several exceptions. The following are the most important of these exceptions:

- The income out of which the dividend is distributed has already been taxed in South Africa; and
- The income out of which the dividend is distributed has been or will be attributed to a South African resident company or individual under the CFC measures (see Section E).

*Withholding Tax.* Dividends paid and remittances by a branch to its head office are not subject to withholding tax.

A 10% withholding tax is proposed to replace the STC, effective from late 2008.

**Foreign Tax Relief.** In the absence of treaty relief provisions, unilateral relief is granted through a credit for foreign taxes paid on

foreign dividends (see *Dividends* above) and branch profits or on income attributed under the CFC (see Section E) rules, limited to the lesser of the actual foreign tax liability and the South African tax on such foreign income. Excess credits may be carried forward but they are lost if they are not used within seven years.

STC is recognized as a creditable tax under certain tax treaties.

### **C. Determination of Trading Income**

**General.** The assessment is based on taxable income determined in accordance with the Income Tax Act. Taxable income normally approximates profit calculated in accordance with generally accepted accounting practice, before adjustment for specific allowances and nondeductible items.

To be eligible for deduction, expenditures must be incurred in the production of income and for purposes of trade, and must not be of a capital nature.

Prepayments of insurance, rent and certain other items may not be deducted in full in the tax year of payment unless either of the following applies:

- The related service or other benefit is enjoyed within six months after the end of the tax year of payment; or
- The aggregate of such expenditure is less than R 50,000.

Nonresident companies are exempt from tax on South African-source interest income unless the income is directly related to the operation of a branch.

**Inventories.** Inventory is valued at the lower of cost or net realizable value. Last-in, first-out (LIFO) is not an acceptable method of valuation for tax purposes. Appropriate overhead expenses must be included in the valuation of inventory. Consumable stores and spare parts are included as trading stock.

#### **Tax Depreciation (Capital Allowances)**

*Industrial Plant and Machinery.* SBCs (see Section B) qualify for a 100% deduction of the cost of new or used plant or machinery that is first brought into use on or after 1 April 2001 in a manufacturing or similar process.

New plant and machinery that is brought into use in a manufacturing or similar process by other businesses is depreciated at a rate of 40% in the first year and at a straight-line rate of 20% for the second, third and fourth years. Used machinery or plant used in such a process qualifies for a 20% allowance per year over five years. The same allowances apply to foundations for plant and machinery if they are built specifically for particular machines and have a useful life limited to the life of the relevant machine.

*Industrial Buildings.* A 5% annual straight-line allowance is granted on the cost of the construction of, and improvements to, buildings erected by a taxpayer. Purchased industrial buildings generally qualify for annual straight-line allowances on the purchase price paid, excluding the amount attributable to the land, at the following rates: 2% if originally constructed before 1 January 1989; 5% if constructed during the period of 1 January 1989 through 30 June 1996; and 10% if constructed during the period of 1 July 1996 through 31 March 2000. For industrial buildings purchased after 1 April 2000, a straight-line allowance of 5% must be claimed.

*Hotels.* Construction of and improvements to hotels qualify for a 5% straight-line allowance. However, capital expenditure on the internal renovation of hotels qualifies for straight-line depreciation at an annual rate of 20%.

*Urban Renewal.* The cost of erection of new buildings or renovation (including extension) of old buildings in certain depressed urban areas qualifies for allowances if the building is used by the taxpayer for the taxpayer's own trade or is leased for commercial or residential purposes. If the building is new or significant extensions are made to an existing building, the allowance is 20% in the year of first occupation and 5% per year for the following sixteen years. If a building is renovated with only incidental additions, the allowance is 20% per year for five years.

*Wear-and-Tear Allowances.* An annual "wear-and-tear" tax depreciation allowance may be calculated using the declining-balance method or the straight-line method, but the straight-line method is generally preferred by the Inland Revenue. The allowance may be claimed based on the value (generally the cost) of movable nonmanufacturing machinery and equipment used by the taxpayer for the purposes of its trade. Rates for the wear-and-tear allowance are not prescribed by statute, but certain periods of depreciation are generally accepted by the tax authorities. The following are some of the acceptable periods of straight-line depreciation.

<b>Asset</b>	<b>Years</b>
Aircraft (light passenger, commercial and helicopters)	4 or 5
Computers (mainframe)	5
Computers (personal computers)	3
Computer software (mainframes)	
Purchased	3
Self-developed	1
Computer software (personal computers)	2
Furniture	6
Passenger cars	5

Apportionment of the wear-and-tear allowances is required for assets acquired during the course of a year.

Any asset costing R 5,000 or less may be written off in the year of acquisition of the asset.

*Special Capital Allowances.* The cost of developing and registering patents, designs, copyrights or similar property, and related know-how may be written off in the year the expenditure is incurred. Buildings and equipment used in research and development can generally be written off at a rate of 40% in the year of first use and 20% in each of the subsequent three years. The cost of developing trademarks is not deductible.

The acquisition cost of patents, copyrights and similar property (other than trademarks) and of related know-how is deductible at a rate of 5% per year. The cost of designs is deductible at a rate of 10% per year.

Goodwill is not depreciable for tax purposes.

Deductions with respect to restraint of trade payments are allowed over the period of restraint, with a minimum period of three years.

A 10% annual allowance is granted for the cost of new and unused pipelines used for transportation of natural oil, gas and refined products.

A 5% annual allowance is granted for the following: electrical lines, telephone lines or cables used for the transmission of signals for the purpose of telecommunications; and railway lines used for the transportation of persons, goods and other items.

Other special capital allowances are provided for expenditures on ships and aircraft, hotel equipment, scientific research and employee housing, plant and machinery of small business corporations (see Section B), aircraft hangars, aprons, runways and taxiways, as well as for certain capital expenditures for mining and agriculture, which are deductible in full against mining and agricultural income.

*Recapture.* The amount of tax depreciation claimed on an asset may be recouped (recaptured) when the asset is sold. In general, the amount recouped is the excess of the selling price over the tax value, but it is limited to the amount of depreciation claimed.

**Groups of Companies.** Companies in a group may not share their tax losses with other profitable companies in the group.

Special rules provide income tax and CGT relief for transactions between 70%-held group companies and between founding shareholders and their companies. These transactions include the following: company formations; share-for-share transactions; amalgamation transactions; intragroup transactions; unbundling transactions; and transactions relating to the liquidation, winding up and deregistration of companies.

**Relief for Losses.** Tax losses may not be carried back but may be carried forward indefinitely, provided there is trading in every tax year.

Foreign tax losses may offset foreign income only. If a foreign tax loss exceeds foreign income, the excess may be carried forward to offset foreign income in future years for an unlimited period.

## D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, levied on supply of a wide range of goods and services	
Standard rate	14
Disposals of going concerns and certain exports	0
Skills development levy, on remuneration	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Measures were introduced in the 1960s to stem the outflow of capital from South Africa and to ensure a measure of stability in currency markets. If 75% or more of a company's capital is held by foreign shareholders, the local borrowings of the company are restricted in accordance with a formula. Under this formula, maximum allowable local borrowings

range from 300% of owner's equity, including shareholder loans, for a wholly foreign-owned company, to 133% of owner equity for a 75% foreign-owned company. If less than 75% of a company is foreign-owned, no restrictions are imposed on local borrowings.

**Debt-to-Equity Rules.** The tax law includes provisions that counter thin capitalization by adjusting both the interest rate and the amount of a loan based on arm's length principles. These provisions generally require a debt-to-equity ratio of no more than 3:1. The exchange control no longer applies its own thin-capitalization rules.

**Transfer Pricing.** The South African tax law includes transfer-pricing provisions, which counter the manipulation of prices for goods and services, including financial services (loans), in cross-border transactions between related parties. Exchange control regulations (see *Foreign-Exchange Controls* above) also discourage unreasonable pricing by imposing the requirement that many foreign contracts, such as license agreements, must be approved by the Department of Trade and Industry before payment is allowed.

**Antiavoidance Legislation.** In addition to transfer-pricing rules (see *Transfer Pricing* above), South African law contains a general antiavoidance provision to attack arrangements that are primarily tax-motivated. The Inland Revenue can tax an amount, ignoring any scheme entered into, if it can establish all of the following:

- A transaction, operation or arrangement had the effect of avoiding or postponing tax liability.
- The transaction was entered into solely or primarily to avoid or postpone tax.
- Any of the following circumstances existed:
  - The transaction was entered into in a manner not normally used for bona fide business purposes or lacked commercial substance;
  - In a nonbusiness context, the transaction was entered into in an abnormal manner or created rights or obligations not normally created by persons dealing at arm's length; or
  - The transaction misused or abused any provision of the Income Tax Act.

**Personal Service Companies.** The interposition of a corporate entity (personal service company) to disguise employment income and, accordingly, prevent the imposition of employee withholding tax on employees has been effectively outlawed. These companies are taxed at a rate of 34% and may claim only certain deductions, such as salaries, legal expenses, bad debts, contributions by the employer to pension and provident funds and medical aids, tax depreciation, rental expenses, finance charges, insurance, repairs, and fuel and maintenance for assets. The expenses with respect to premises and assets are allowed as deductions only if they are incurred wholly or exclusively for purposes of trade. Personal service companies may deduct the cost of fringe benefits to the extent that they are taxable in the hands of the recipients.

**Controlled Foreign Companies.** Legislation regulates the taxation of certain income of controlled foreign companies (CFCs). Key aspects of the legislation are described below.



Net foreign income, including capital gains, derived by a CFC (calculated using South African tax principles, but generally ignoring passive income flows between CFCs in a 70%-held group) may be attributed proportionately to any South African resident beneficial owner of the CFC who has an interest of 10% or more in the CFC.

A company is considered to be a CFC if more than 50% of the participation or voting rights of the company is held by South African residents. In determining whether residents hold more than 50% of the participation rights of a foreign company that is listed on a recognized stock exchange or is a collective-investment portfolio, any person who holds less than 5% of the participation rights of the foreign company is deemed not to be a resident unless connected parties hold more than 50% of the participation rights of the company. The CFC rules do not apply to a resident if, during the entire tax year of the CFC, the resident (together with any connected person) holds less than 10% of the participation rights.

A South African resident (together with connected persons) who holds at least 10%, but less than 20%, of the participation rights of a foreign company may elect annually that the company be treated as a CFC subject to the look-through rules, even if the company does not qualify as a CFC under the normal rules.

A resident may also elect to ignore the exemptions from CFC attribution if the resident (together with connected persons) holds at least 10%, but less than 20%, of a CFC or has elected that the resident's holding in a non-CFC be treated as a CFC holding (see above).

A CFC's income is not attributed to a South African resident to the extent that the income is effectively connected to a business operation carried on through a "business establishment" that is, in broad terms, suitably equipped with on-site operational management, employees, equipment and other facilities for the purpose of conducting the primary operations of the business and is used for a bona fide business purpose and not for tax avoidance (the place of business may be located elsewhere than in the CFC's home country). Several antiavoidance exceptions exist with respect to the measure described in this paragraph.

See Section B for information regarding foreign attributable tax credits and carryforward rules.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the withholding rate under domestic tax law.

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Algeria	0	0	10 (f)
Australia	0	0	10
Austria	0	0	0
Belarus	0	0	0
Belgium	0	0	0 (f)
Botswana	0	0	12
Brazil	0	0	10/15 (k)
Bulgaria	0	0	5/10 (j)

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Canada	0	0	6 (f)(g)
China	0	0	10 (f)(h)
Croatia	0	0	5 (f)
Cyprus	0	0	0 (f)
Czech Republic	0	0	10 (f)
Denmark	0	0	0 (f)
Egypt	0	0	12
Ethiopia	0	0	20
Finland	0	0	0 (f)
France	0	0	0 (f)
Germany	0	0	0 (c)
Greece	0	0	5/7 (i)
Grenada (e)	0	0	12
Hungary	0	0	0 (f)
India	0	0	10 (f)
Indonesia	0	0	10 (f)
Iran	0	0	10 (f)
Ireland	0	0	0 (f)
Israel	0	0	0 (d)
Italy	0	0	6 (f)
Japan	0	0	10 (f)
Korea	0	0	10 (f)
Lesotho	0	0	10 (f)
Luxembourg	0	0	0 (f)
Malawi	0	0	0 (c)
Malaysia	0	0	5
Malta	0	0	10 (f)
Mauritius	0	0	0 (f)
Namibia	0	0	10
Netherlands	0	0	0
New Zealand	0	0	10
Norway	0	0	0 (f)
Oman	0	0	0
Pakistan	0	0	10 (f)
Poland	0	0	10
Romania	0	0	12
Russian Federation	0	0	0
Seychelles (e)	0	0	12
Sierra Leone (e)	0	0	12
Singapore	0	0	5 (f)
Slovak Republic	0	0	10
Swaziland	0	0	0 (c)
Sweden	0	0	0 (c)(f)
Switzerland	0	0	0
Taiwan	0	0	10 (f)
Thailand	0	0	12
Tunisia	0	0	10
Turkey	0	0	10
Uganda	0	0	12
Ukraine	0	0	10
United Kingdom	0	0	0 (c)
United States	0	0	0 (f)
Zambia	0	0	0 (c)
Zimbabwe	0	0	0 (c)
Nontreaty countries	0	0	12

- (a) Dividends are not subject to withholding tax in South Africa.
- (b) Nonresident companies are exempt from tax on South African-source interest unless they are engaged in business in South Africa.
- (c) Exempt if subject to tax in recipient country; otherwise, 12%.
- (d) In general, exempt if subject to tax in Israel; otherwise, the rate is 12%. If royalties derived from cinematographic and television films are subject to tax in Israel, the rate is 4.5%.
- (e) An agreement signed in 1946 between South Africa and the United Kingdom was extended to apply to these countries and is apparently still in force.
- (f) The rate applies only if the recipient is the beneficial owner of the royalties.
- (g) The rate is 10% for franchise royalties.
- (h) The rate is 7% for rent paid for equipment.
- (i) The 5% rate applies to royalties paid for copyrights of literary, artistic and scientific works. The 7% rate applies to royalties paid for patents, trademarks and designs.
- (j) The 5% rate applies to royalties paid for copyrights of cultural, dramatic, musical or other artistic works or for industrial, commercial and scientific equipment. The 10% rate applies to other royalties.
- (k) The 15% rate applies to royalties paid for the use of trademarks. The 10% rate applies to other royalties.

South Africa has also entered into comprehensive tax treaties with Ghana and Tanzania, but details regarding these treaties were not available at the time of publication.

South Africa has ratified comprehensive tax treaties with Congo (Democratic Republic of), Gabon, Kuwait, Nigeria, Rwanda and Spain.

South Africa has signed comprehensive tax treaties with Portugal and Saudi Arabia, but these treaties have not yet been ratified.

South Africa is currently negotiating comprehensive tax treaties with Chile, Cuba, Estonia, Germany, Latvia, Lithuania, Malawi, Mexico, Morocco, Mozambique, Namibia, Qatar, Serbia, Sri Lanka, Sudan, Syria, United Arab Emirates, Vietnam, Zambia and Zimbabwe, but these treaties have not yet been signed.

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Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (b)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	18 (c)
Interest	18 (d)
Royalties from Patents, Know-how, etc.	24 (c)
Branch Remittance Tax	18 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	15

- (a) Other rates apply to specified entities. See Section B.  
 (b) Certain capital gains are exempt from tax or are subject to tax at a reduced rate. See Section B.  
 (c) See Section B.  
 (d) Certain interest is exempt from tax. See Section B.  
 (e) Exceptions may apply to this rate. See Section B.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Corporate tax is imposed on the income of companies and other entities and organizations that have a separate legal status. Resident entities are taxable on their worldwide income. The following entities are considered to be resident entities:

- An entity incorporated under Spanish law.
- An entity having its legal headquarters or its effective place of management in Spain.
- An entity that is resident in a tax haven, or in a country with no income taxation, if the majority of its assets is located in Spain or a majority of its rights should be exercised in Spain, or if the principal activity of the entity is carried out in Spain. This provision does not apply if business reasons justify the effective performance of operations and exercise of management in such foreign jurisdiction.



Nonresident entities are taxable only on Spanish-source income, which includes income from any kind of business activity conducted in Spain through a branch, office or other permanent establishment. Nonresident companies or individuals must appoint a fiscal representative if they are conducting business activities in Spain through a permanent establishment or if certain other specified circumstances exist. A branch is exempt from tax in Spain if Spain has entered into a double tax treaty with another country and such country grants the same exemption.

**Tax Rates.** The general tax rate for residents and nonresidents that conduct business activities in Spain through a permanent establishment is 30% for tax years beginning on or after 1 January 2008. Entities that earned net turnover of less than €8 million in the immediately preceding tax year are taxed at a rate of 25% on profits up to €120,202.41, and at a rate of 30% on profits exceeding this amount. Other tax rates apply to certain specified entities.

In addition to other tax benefits, companies licensed to operate in the Canary Islands Special Zone (ZEC) are subject to a reduced tax rate of 4% if certain conditions are satisfied.

In principle, nonresident entities operating in Spain without a permanent establishment are taxable at a general rate of 24%. However, dividends and interest received by such entities are subject to a final withholding tax at a rate of 18%. The tax rate applicable to income from reinsurance operations is 1.5%. A 4% tax rate applies to companies operating ships and aircrafts in Spain. Interest income is exempt from tax if the recipient is resident in a European Union (EU) member state (or if the recipient is an EU permanent establishment of a company that is resident in a EU member state) that is not on Spain's tax haven list. Interest paid to nonresidents on Spanish Treasury obligations is exempt from tax if the recipient is not resident in a tax haven. Income derived by nonresidents without a permanent establishment in Spain from bonds issued in Spain by nonresidents without a permanent establishment in Spain and from bank accounts is exempt from tax in Spain. Royalties paid to EU resident companies or permanent establishments may be taxed at a reduced rate of 10% if specific conditions are met (unless a lower tax treaty rate applies).

In addition to corporate income tax at a rate of 30%, nonresident entities operating in Spain through a permanent establishment are subject to a branch remittance tax at a rate of 18% unless an exception applies. Branches of EU resident entities are exempt from this tax, except for tax-haven residents. A branch can be exempt from this tax if a double tax treaty does not mention this tax and if the other treaty country provides reciprocal treatment.

**Capital Gains.** Spanish law generally treats capital gains as normal income taxable at the regular corporate tax rate. Capital gains may qualify for a 12% tax credit if conditions for reinvestment relief are satisfied.

Capital gains realized by nonresident entities without a permanent establishment in Spain are taxed at a rate of 18%. Capital gains on movable property, including shares, are not subject to

tax if the recipient is resident in an EU country that is not on Spain's tax haven list, unless the gains are on the transfer of shares and either the seller owns at least 25% of the company or the company's assets consist primarily of Spanish real estate.

If a nonresident that does not have a permanent establishment in Spain disposes of Spanish real estate, a 3% tax is withheld by the buyer from the sales price, with certain exceptions. The tax withheld constitutes an advance payment on the final tax liability of the seller.

Capital gains derived by nonresidents without a permanent establishment in Spain from the reimbursement of units in Spanish investment funds or from the sale of shares traded on a Spanish stock exchange are exempt from tax in Spain if the seller is resident in a jurisdiction that has entered into a tax treaty with Spain containing an exchange of information clause.

**Administration.** The tax year is the same as the accounting period, which may be other than a calendar year. The tax year may not exceed 12 months. The tax return must be filed within 25 days after six months following the end of the tax year. In April, October and December of each calendar year, companies must make payments on account of corporate income tax equal to either of the following:

- Eighteen percent of the tax liability for the preceding tax year.
- An amount calculated by applying 5/7 of the corporate income tax rate to the profits for the year as of the end of the month preceding the date of the payment and then subtracting from the result tax withheld from payments to the company and advance payments of tax previously made. This alternative is compulsory for companies with turnover of more than €6,010,121.04 in the immediately preceding tax year.

**Dividends.** Dividends received by a resident company from another resident company are subject to corporate tax, as well as to an 18% withholding tax, which may be credited against the corporate tax. However, the withholding tax is not imposed if, at the time of the distribution, the recipient of the dividend has owned at least 5% of the payer for an uninterrupted period of more than one year. Under Spanish domestic law, in general, a tax credit of 50% is granted to a resident company that receives dividends. The credit is increased to 100% if, at the time of the distribution, the company receiving the dividend has owned (or makes a commitment to own) at least 5% of the paying company for an uninterrupted period of one year. The 50% or 100% tax credit does not apply if the shares on which the dividends are paid are purchased within a two-month period before the date of distribution of the dividends and such shares or similar shares are sold within the two-month period after such date. The credit also does not apply if the dividend does not increase taxable income or if the distribution causes depreciation in the value of the shares (some exceptions are allowed). The credit may be carried forward to the following seven years.

A tax credit is granted to resident companies that derive income from transfers of shares of other resident companies subject to Spanish corporate income tax if, at the time of transfer, the company has owned at least 5% of the share capital of the other com-

pany for an uninterrupted one-year period. This credit is calculated by applying the general rate (currently, 30%) to the portion of the capital gains representing undistributed profits earned during the period the shares were held by the company. The tax credit may be carried forward to the following seven years.

Distributions by Spanish subsidiaries to parent companies in EU member states are exempt from withholding tax if the parent company owns at least 15% (or subject to reciprocity, 10% in certain cases) of the subsidiary for an uninterrupted period of at least one year and if certain other requirements are met. The one-year holding period requirement may be satisfied at the date of the distribution or subsequent to such date. An antiavoidance provision also applies in situations in which the ultimate shareholder is not an EU resident.

**Foreign Portfolio Holding Companies.** A special tax regime applies to companies that have foreign portfolio holding company (*entidades de tenencia de valores extranjeros* or ETVE) status. ETVEs are ordinary Spanish companies that engage in the administration and management of participations in the equity of nonresident entities. ETVEs may also engage in other activities. In addition to the general exemption for dividends and capital gains derived from shares in foreign companies described in *Foreign Tax Relief* below, an ETVE benefits from certain other tax advantages, including the following:

- No withholding tax is imposed on distributions made by ETVEs out of reserves derived from tax-exempt foreign-source dividends and capital gains to nonresident shareholders who are not tax-haven residents;
- Capital gains derived by foreign shareholders of ETVEs from transfers of shares in ETVEs are not taxed to the extent that the capital gain corresponds to qualifying exempt dividends and gains (realized or unrealized) derived at the ETVE level if the shareholder is not resident in a tax haven; and
- Share-for-share and in-kind contributions to ETVEs may qualify for an exemption from capital duty.

**Participation Exemption Regime and Foreign Tax Relief.** The exemption method may be used to avoid double taxation on dividends received from abroad and on certain capital gains derived from transfers of shares of foreign companies if the following requirements are met:

- At the time of the distribution of the dividend or the generation of the capital gain, the Spanish company has owned, directly or indirectly, at least 5% of the share capital of the nonresident company for an uninterrupted period of at least one year. (ETVEs are not required to hold the 5% share interest in the foreign company if the acquisition cost exceeds €6 million.) For dividends, the one-year period can be completed after the distribution. In addition, the time period in which the participation is held by other group entities is taken into account for purposes of the computation of the one-year period.
- The foreign company is subject to and not exempt from corporate tax in a tax system that is similar to Spain's corporate tax system. This requirement is considered to be met if the subsidiary is resident in a country that has entered into a double tax treaty with Spain containing an exchange-of-information clause.

- The foreign company is not resident in a country identified by the Spanish tax authorities as a tax haven.
- The foreign company derives at least 85% of its income from business activities conducted outside Spain.

If the exemption method does not apply, a foreign tax credit is available for resident entities equal to the lower of the following:

- The Spanish corporate tax that would have been payable in Spain if the foreign income had been obtained in Spain; and
- The actual income tax paid abroad on the foreign-source income.

A tax credit for underlying foreign taxes paid by a subsidiary on the profits out of which dividends are paid and a tax credit for foreign withholding taxes paid on dividends are allowed.

The credit and exemption methods may not be used with respect to the same income. Tax credits granted under the credit method may be carried forward for 10 years.

### C. Determination of Taxable Income

**General.** Taxable income is the company's gross income for the tax year, less certain deductions. It is determined from the annual financial statements prepared under generally accepted accounting principles, as adjusted for certain statutory tax provisions.

In general, all necessary expenses incurred in producing income during the year and depreciation on income-producing property may be deducted from gross income to arrive at taxable income.

The following items are not deductible from gross income:

- Penalties and fines;
- Corporate income tax payments;
- Gifts and donations;
- Expenditures for the improvement or enhancement of capital assets; and
- Depreciation charges that exceed the maximum rates prescribed by law, unless it can be demonstrated that the rates used correspond to the actual depreciation incurred.

**Inventories.** The corporate tax law does not prescribe permissible methods for the valuation of inventory. Consequently, any valuation method allowed under the Spanish accounting rules may be used for tax purposes. These methods include acquisition cost, production cost, last-in, first-out (LIFO) and first-in, first-out (FIFO).

**Provisions.** Subject to certain limitations, the corporate income tax regulations permit the deduction of reserves for inventory, securities, liabilities from lawsuits, extraordinary repairs, unsold publications and doubtful debts.

**Depreciation.** All tangible assets (except land), fixed or movable, that are owned by and used in the trade or business of a company are depreciable if their useful life exceeds a tax year. Intangible assets may be amortized if they depreciate and have a limited useful life, such as patents and trademarks. Under certain circumstances, goodwill and intangible assets with an indefinite life are depreciable for tax purposes.

Financial goodwill corresponding to shares in foreign subsidiaries that meet the requirements for the application of the exemption

regime (see Section B) may be amortized for tax purposes at an annual rate of up to 5%.

Depreciation methods are restricted to the straight-line method and the declining-balance method. The straight-line method may be used for any depreciable asset. The declining-balance method may be used only for certain new tangible assets (industrial and farming machinery, vehicles, information systems and so forth) that have an anticipated useful life of three years or more.

The basis for depreciation is the acquisition price of assets purchased by the company or the manufacturing cost of assets manufactured by the company. The acquisition price includes all related costs, such as customs duties, transportation costs and installation expenses.

Depreciation rates are fixed by law. The rates vary depending on the industry. The following are general straight-line rates and periods of depreciation for certain assets.

<b>Asset</b>	<b>Maximum Rate %</b>	<b>Maximum Period of Depreciation Years</b>
Commercial buildings	2	100
Industrial buildings	3	68
Office equipment	10 or 15	20 or 14
Motor vehicles	16	14
Plant and machinery	10 or 12	20 or 18
Computers	25	8
Goodwill	5	20
Intangible assets	10	20

Companies may use higher rates if they can demonstrate that the actual depreciation is in excess of that allowed by law.

To be deductible, the depreciation amount must be recorded in the company's accounting books (some exceptions to this requirement may apply) and must be "effective," that is, it must correspond to the actual depreciation of the asset. The second condition is met if the depreciation amount is calculated in accordance with the rates prescribed by law or with other rates that have been expressly approved by the tax authorities. Otherwise, the "effectiveness" of the depreciation must be demonstrated. Only new assets located in Spain qualify for accelerated depreciation. On request, the tax authorities may grant approval for accelerated depreciation if the company presents a plan specifying the assets, the date and price of the acquisition, the depreciation rates and the annual depreciation allowance desired, and reasons to support the adoption of such a plan.

Income derived from certain intangible assets may be reduced by 50% for tax purposes, resulting in an effective tax rate of 15%, if certain criteria are met. The following intangibles are subject to this special regime: patents; drawings; models and blueprints; formulas or secret procedures; and rights regarding information pertaining to industrial, commercial or scientific experiences. The special regime is not available in a fiscal year in which the amount of income exceeds six times the cost of the asset.

**Relief for Losses.** Tax losses may be carried forward and offset against future taxable income for a period of 15 tax years. For

newly established enterprises, the 15-year period begins in their first profitable year for tax purposes. Tax losses may not be carried back.

**Groups of Companies.** A group of companies may file a consolidated tax return if it informs the tax authorities before the beginning of the tax year for which the consolidated regime will apply. After the group elects taxation under the consolidated regime, the regime applies indefinitely, provided certain requirements are satisfied. For tax purposes, a group of companies is defined as a group of corporations resident in Spain controlled by a parent corporation that is a resident of Spain and that is not controlled by another resident company. For this purpose, corporations include stock companies (*sociedades anónimas*, or SAs), limited liability companies (*sociedades limitadas*, or SLs) and limited partnerships (*sociedades comanditarias por acciones*, or SCpAs). The parent company may adopt any of these legal forms or, otherwise, it must have legal personality and be subject to and not exempt from corporate income tax. Registered branches of nonresident entities may qualify as controlling top entities in consolidated groups.

A company is deemed to control another company if, on the first day of the tax year for which the consolidated regime applies, it satisfies the following requirements:

- It owns, directly or indirectly, at least 75% of the other company's share capital, and it maintains such ownership for the entire tax year of consolidation;
- It is not subject to certain look-through regimes; and
- It is not a subsidiary of another domestic controlling company.

Tax-exempt companies, companies taxed at a different rate than the parent company and companies in specified legal situations, such as bankruptcy, may not be part of a group of companies.

Net operating losses of a group company suffered in tax years in which it did not belong to the group may offset only the taxable income generated by such company.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT), levied on goods delivered and services rendered within the Spanish territory (excluding the Canary Islands, Ceuta and Melilla), on imports from EU and non-EU member states, and on certain services rendered by foreign suppliers to persons subject to Spanish VAT	
Standard rate	16
Rate on certain necessary products and services	7
Rate on basic products	4
Special annual tax on real estate owned by nonresident companies, assessed on the government's official value on 31 December; exemption for real estate used in business and for companies resident in countries with which Spain has a tax treaty	3

Nature of Tax	Rate (%)
Social security and employee-related fund contributions, calculated on an employee's total compensation, with certain limitations; paid by	
Employer	30.8
Employee	6.4
Capital duty on incorporations, share capital increases, and reductions and liquidations of companies; exemptions apply to corporate reorganizations	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Exchange controls are administered by the Bank of Spain and the Ministry of Economy and Finance. The government relaxes or tightens controls to reflect the prevailing economic and monetary situation. Exchange controls were liberalized several years ago. As a result, only a few, simple reporting requirements are now imposed, primarily for statistical purposes.

**Debt-to-Equity Rules.** A thin-capitalization rule applies in Spain. Any interest paid on loans from foreign related parties in excess of a 3:1 debt-to-equity ratio is treated as dividends. This ratio may be increased through an advance pricing agreement (APA) process.

The thin-capitalization measures do not apply if the lender is an EU-resident company that does not reside in a territory included in the Spanish tax haven list.

**Antiavoidance Legislation.** To prevent fraud, the tax code contains several antiavoidance measures in various chapters. The substance-over-form principle applies.

**Controlled Foreign Companies.** Under controlled foreign company (CFC) rules contained in the corporate income tax law, Spanish resident companies must include in their tax base certain passive income derived by their foreign subsidiaries if certain control and effective taxation conditions are satisfied. Significant exceptions apply to these rules.

The CFC rules do not apply to EU-resident companies that do not reside in a territory included in the Spanish tax haven list.

**Transfer Pricing.** Spanish law includes the arm's length principle and the requirement of documenting all related-party transactions. The arm's length principle applies to all transactions carried out by taxpayers with related parties. The following are the principal aspects of the law:

- Taxpayers must use arm's length values in their tax returns. As a result, taxpayers bear the burden of proof on transfer-pricing issues.
- Organization for Economic Cooperation and Development (OECD) guidelines and pricing methodology apply.
- Advance Price Agreements (APAs) may be negotiated. They apply to the current year, the preceding year and the following four years.
- Statutory documentation requirements in line with the guidelines of the EU Joint Transfer Pricing Forum are expected to

enter in force during 2008. This documentation will be required to support the taxpayer's transfer-pricing policy regarding domestic and international transactions.

- Penalties and delay interest may be imposed. If the documentation is correct, the tax authorities do not impose a penalty with respect to a transfer-pricing assessment.

## F. Treaty Withholding Tax Rates

The rates reflect the lower of the treaty rate and the rate under domestic tax law.

	<b>Dividends (l)</b> %	<b>Interest (v)</b> %	<b>Royalties</b> %
Algeria	5 (d)	5 (e)	7 (mm)
Argentina	10 (d)	12.5 (t)	10 (p)
Australia	15	10	10
Austria	10 (d)	5	5
Belgium	0 (cc)	10 (e)	5
Bolivia	10 (d)	15 (e)	15
Brazil	15	15 (b)	15 (c)
Bulgaria	5 (d)	0	0
Canada	15	15	10
Chile	10 (dd)	15 (ee)	10 (ff)
China	10	10	10
Croatia	0 (rr)	8 (e)	8
Cuba	5 (d)	10 (e)	5 (s)
Czechoslovakia (m)	5 (d)	0	5
Denmark	15	10	6
Ecuador	15	10 (e)(o)	10 (a)
Egypt	9 (ss)	10 (e)	12
Estonia	5 (d)	10 (e)	10 (nn)
Finland	10 (d)	10	5
France	15 (w)	10 (e)	5
Germany	10 (d)	10	5
Greece	5 (bb)	8 (e)	6
Hungary	5 (d)	0	0
Iceland	5 (d)	5 (qq)	5
India	15	15 (t)	10 (u)
Indonesia	10 (d)	10	10
Iran	5 (tt)	7.5 (e)	5
Ireland	15	0	10 (j)
Israel	10	10 (z)	7 (aa)
Italy	15	12 (t)	8 (f)
Japan	10 (d)	10	10
Korea	10 (d)	10 (t)	10
Latvia	5 (oo)	10 (e)	10 (nn)
Lithuania	15 (gg)	10 (e)	10 (ff)
Luxembourg	10 (d)	10 (t)	10
Macedonia	5 (uu)	5 (e)	5
Malaysia	5 (xx)	10	7 (yy)
Malta	0 (vv)	0	0
Mexico	5 (d)	15 (n)	10 (s)
Morocco	10 (d)	10	10 (a)
Netherlands	10 (d)(g)	10	6
New Zealand	15	10 (qq)	10
Norway	10 (d)	10 (e)	5
Philippines	10 (d)	15 (q)	15 (r)
Poland	5 (d)	0	10 (pp)



	<b>Dividends (l)</b> %	<b>Interest (v)</b> %	<b>Royalties</b> %
Portugal	10 (d)	15	5
Romania	10 (d)	10	10
Russian Federation	5 (x)	5 (y)	5
Slovenia	5 (d)	5	5
South Africa	15 (gg)	5 (zz)	5
Sweden	10 (d)	15	10
Switzerland	15 (xx)	0	5 (kk)
Thailand	10	15 (t)	15 (j)
Tunisia	5 (d)	10 (i)	10
Turkey	15 (hh)	15 (ii)	10
USSR (h)	18	0	5 (pp)
United Arab Emirates	15 (jj)	0	0
United Kingdom	10 (d)	12	10
United States	10 (d)	10 (e)	10 (j)
Venezuela	10 (kk)	10 (ll)	5
Vietnam	7 (ww)	10 (e)	10
Nontreaty countries	18	18 (k)	24

- (a) A 5% rate applies to copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).
- (b) A 10% rate applies to interest paid to financial institutions for long-term (10 or more years) loans for goods or equipment.
- (c) A 10% rate applies to royalties paid for copyrights of literary, artistic or scientific works (including films and videotapes produced by a resident of a contracting state).
- (d) The treaty withholding rate is increased to 15% in certain circumstances if the recipient is not a corporation or the shareholding does not exceed a certain percentage.
- (e) Certain interest payments are exempt.
- (f) The rate is 4% for royalties for copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).
- (g) The withholding rate is 5% if the recipient is not subject to Dutch tax on the dividends and if the 10% rate would otherwise apply.
- (h) Spain honors the double tax treaty with the former USSR with respect to Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan.
- (i) A 5% rate applies to loans over seven years.
- (j) A 5% rate applies to copyrights of musical compositions and literary, dramatic or artistic works. The rate is 8% for royalties from motion picture films, films, tapes and other means of transmission or reproduction of sounds; for industrial, commercial or scientific equipment; and for the copyright of scientific work.
- (k) See Section B.
- (l) Distributions by Spanish subsidiaries to parent companies in EU member states are exempt from withholding tax if the parent company owns at least 15% (or subject to reciprocity, 10% in certain cases) of the subsidiary for an uninterrupted period of at least one year and if certain other requirements are met. The one-year holding period requirement may be satisfied at the date of the distribution or subsequent to such date. An antiavoidance provision also applies in situations in which the ultimate shareholder is not an EU resident.
- (m) Spain honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (n) The withholding tax is 10% if the effective beneficiary of the interest is a financial entity.
- (o) A 5% rate applies to certain loans.
- (p) A 3% rate applies to the use of news; a 5% rate applies to copyrights of musical, literary, dramatic or artistic works; a 15% rate applies to other copyright royalties.
- (q) A 10% rate applies to interest paid with respect to sales of industrial equipment or publicly traded bonds.
- (r) A 20% rate applies to royalties with respect to films, television or radio. A 10% rate applies to royalties derived in preferred areas of activities.
- (s) Certain copyright royalties are exempt.

- (t) Interest paid to the government or central bank of the other contracting state is exempt from tax if the recipient is the beneficial owner of the interest. The government of the state of the payer may authorize an exemption for interest paid to a beneficial recipient other than the government or central bank of the other contracting state.
- (u) A 20% rate applies to certain royalties.
- (v) Interest paid to an EU resident without a permanent establishment in Spain is exempt from tax.
- (w) No withholding tax is imposed if the recipient is a company that is subject to corporate income tax and holds a participation of at least 10% in the payer.
- (x) The withholding tax rate is 5% if the effective beneficiary of the dividends is a company that has invested at least ECU 100,000 in the share capital of the payer and if the dividends are exempt from tax in the other contracting state. The withholding tax rate is 10% if only one of these requirements is met. The withholding tax rate is 15% for other dividends.
- (y) No withholding tax is imposed on interest paid to and beneficially owned by financial institutions with respect to long-term (seven years or more) loans and certain other debts.
- (z) A 5% rate applies to interest paid with respect to sales of industrial, commercial, scientific equipment, or on loans from financial institutions. A 0% rate applies to interest paid to the government or central bank of the other contracting state.
- (aa) A 5% rate applies to royalties paid for copyrights of musical compositions, and literary, dramatic or artistic works, and to amounts paid for the use of industrial, commercial or scientific equipment.
- (bb) The withholding tax rate is 5% if the effective beneficiary of the dividends is a corporation and if the shareholding is equal or higher than 25%. The withholding tax rate is 10% for other dividends.
- (cc) The 0% rate applies if the following conditions are satisfied: the recipient of the dividends is a corporation; the shareholding is equal or higher than 25%; and this is permitted under the rules of the state of residence of the subsidiary. The rate is 15% if the effective beneficiary is a resident of the other contracting state.
- (dd) A 5% rate applies if the effective beneficiary of the dividends is a corporation that controls at least 20% of the capital of the distributing company.
- (ee) A 5% rate applies to interest derived from loans granted by banks and insurance companies, from bonds and securities traded on a recognized stock exchange and from sales on credit of machinery and equipment.
- (ff) A 5% rate applies to royalties paid for the use of industrial, commercial and scientific equipment.
- (gg) A 5% rate applies if the effective beneficiary of the dividends is a corporation that controls at least 25% of the capital of the distributing company.
- (hh) A 5% rate applies to certain dividend distributions.
- (ii) A 10% rate applies to interest derived from loans granted by banks or in connection with sales on credit of merchandise or equipment.
- (jj) A 5% rate applies if the beneficial owner of the dividends is a corporation that holds directly at least 10% of the entity paying the dividends.
- (kk) A 0% rate applies if certain conditions are met.
- (ll) A 4.95% rate applies to interest paid to financial institutions.
- (mm) A 14% rate applies to royalties paid for artistic, scientific or literary works.
- (nn) A 5% rate applies to royalties paid for industrial, commercial or scientific equipment.
- (oo) The treaty withholding rate is increased to 10% in certain circumstances if the recipient is not a corporation or if the shareholding does not exceed a certain percentage.
- (pp) A 0% rate applies to royalties for copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).
- (qq) Withholding tax is not imposed if the recipient is the beneficial owner of the interest and if the interest is beneficially owned by a contracting state, or a political subdivision or local authority of the contracting state.
- (rr) A 15% rate applies if the shareholding is less than 25%.
- (ss) A 12% rate applies if the shareholding is less than 25%.
- (tt) A 10% rate applies if the shareholding is less than 20%.
- (uu) A 15% rate applies if the shareholding is less than 10%.
- (vv) A 5% rate applies if the shareholding is less than 25%.
- (ww) A 10% rate applies if the shareholding is more than 25%, but less than 50%. A 15% rate applies if the shareholding is less than 25%.
- (xx) A 0% rate applies if the beneficial owner holds at least 5% of the share capital of the distributing entity.
- (yy) A 5% rate applies to income derived from the rendering of technical services.
- (zz) A 0% rate applies to interest paid to financial institutions for long-term (seven years or more) loans.

Tax treaties have been signed with Colombia, Costa Rica, Moldova, Peru, Saudi Arabia and Senegal, and are in the process of being ratified. Tax treaties are in the process of being signed with Armenia, Bosnia-Herzegovina, Jamaica, Namibia, Nigeria, Serbia and Montenegro and Trinidad and Tobago. Tax treaties are being negotiated with Cyprus, the Dominican Republic, Panama, Qatar and Uruguay.

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*The 2008-09 budget proposals were presented on 7 November 2007. The budget contained various tax proposals, which are reflected in this chapter. Because, at the time of writing, the legislation implementing the budget proposals had not been enacted, readers should obtain updated information before engaging in transactions.*

### A. At a Glance

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends	10 (b)
Interest	10/15 (c)

Royalties from Patents, Know-how, etc.	10 (d)
Specified Fees for Services	5
Rent for Commercial Premises	10
Reward Payments, Lottery Winnings and Gambling Winnings	10 (e)
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (f)

- (a) This is the standard rate. For other rates, see Section B.
- (b) This tax, which is a final tax, is imposed on dividends paid to residents and nonresidents. A deemed dividend tax is imposed on companies if the dividend distributed is less than one-fourth of the company's distributable profits. For details, see Section B.
- (c) The 10% rate applies to interest paid on deposits. Companies may offset the 10% withholding tax against their annual income tax liability. The 15% rate applies interest paid to nonresidents on loans.
- (d) This withholding tax applies to payments exceeding Rs. 50,000 per month or Rs. 500,000 per year to residents and nonresidents.
- (e) This withholding tax applies to amounts exceeding Rs. 500,000.
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies resident in Sri Lanka are subject to income tax on their worldwide income. Nonresident companies are subject to tax on their profits and income derived from Sri Lankan sources. A company is considered to be a resident company if its registered or principal office is in Sri Lanka or if the control and management of its business are exercised in Sri Lanka.

**Rates of Corporate Tax.** The standard rate of corporate income tax is 35%. A company that is not a subsidiary or associate company (member of a group of companies) with taxable income of less than Rs. 5 million is taxed at a rate of 15%. New publicly listed companies are taxed at a rate of 33<sup>1</sup>/<sub>3</sub>% for a period of up to five years.

Profits derived from priority sectors are taxed at a rate of 15% or 20%. The 15% rate applies to the following priority sectors: agriculture; construction; exports; fisheries; livestock; and tourism. Nonresident companies may qualify for the 15% rate in all of the priority sectors, except for construction. The 20% rate applies to specialized housing banks.

Foreign-currency banking units of banks are subject to income tax at a rate of 20% on their offshore profits. For onshore profits, the tax rate is 35%. A Social Responsibility Levy is imposed at a rate of 1.5% on all taxes and levies, excluding value-added tax, and withholding taxes.

**Tax Incentives.** Significant tax incentives offered by the Board of Investment (BOI) of Sri Lanka and under the Inland Revenue Act include the following:

- Minimum investment of US\$250,000, US\$500,000 or US\$1,000,000 in the manufacturing of nontraditional goods for export or deemed exports, with a minimum export requirement of 80% of output: tax holidays of 3, 5 or 7 years, respectively, and concessionary tax rates of 10% and 15% thereafter.

- Minimum investment of US\$500,000 in export-oriented services, and export of at least 70% of output: tax holiday of 5 years and concessionary tax rates of 10% and 15% thereafter.
- Minimum investment of US\$150,000 in the manufacturing of industrial tools, equipment, components or machinery: tax holiday of 5 years and concessionary rates thereafter.
- Tax holiday of 5 years and concessionary tax rate of 10% for the subsequent two years for the following small-scale infrastructure projects:
  - Minimum investment of US\$500,000 in power generation, tourism or recreation, construction of warehouses or cold storage, warehouses including logistics and supply management, supermarkets, garbage collection or disposal, construction of hospitals, water supply or infrastructure for the film or cinema industry.
  - Minimum investment of US\$500,000 in the construction of not less than 25 housing units in not more than 4 locations.
  - Minimum investment of US\$500,000 in special projects approved by the Cabinet or by the Cabinet subcommittee on investment facilitation.
  - Minimum investment of US\$5,000,000 in any other infrastructure or construction activity approved by the BOI.
- Minimum investment of US\$150,000 in information technology (IT) and IT-enabled services with a minimum of 15 technically qualified local persons: tax holiday for a specified time period that varies depending on the number of employees (5, 6, 8, 10 and 12 years for up to 250, 400, 600, 800, 1,000, and more than 2,000 employees, respectively), and concessionary tax rate of 10% for the following 2 years.
- Minimum investment of US\$150,000 in business process outsourcing industries with minimum convertible foreign currency earnings of 70%: tax holiday for a time period depending on the number of employees (3, 5, 6, 8, 10 and 12 years for up to 100, 250, 500, 1,000, 1,500, and more than 2,000 employees, respectively), and concessionary tax rates of 10% and 15% thereafter.
- Minimum investment of US\$100,000 in the establishment of training institutes in areas as may be determined by the BOI for specified activities: tax holiday ranging from 5 to 12 years, depending on the number of students to be trained per year, and concessionary tax rates of 10% and 20% thereafter.
- Minimum investment of US\$250,000 in the establishment of regional operating headquarters with at least 70% of turnover derived from specified services provided to two or more off-shore companies established outside Sri Lanka: tax holiday of 3 years and concessionary tax rates of 10% and 15% thereafter.
- Minimum investment of US\$5,000,000 in an industry or other business activity of an advanced technology or pioneering nature, as approved by BOI: tax holiday of 5 years and concessionary tax rate of 10% for 2 years thereafter.
- Minimum investment of US\$100,000 in research and development in specified areas: tax holiday of 5 years and concessionary tax rate of 15% thereafter.
- Minimum investment of US\$150,000 in export-oriented agriculture and agroprocessing enterprises: tax holiday of 5 years and concessionary tax rate of 15% thereafter.
- Minimum investment of US\$150,000 in the modernization of an existing export-oriented company or in a new export-oriented company set up with Hazard Analysis Critical Control

- Point (HACCP) certification or internationally recognized certification for food processing units in the export plantation sector: tax holiday of 5 years and concessionary rate of 15% thereafter.
- Export trading houses with annual turnover of at least US\$5 million: 10% rate for 5 years if turnover is at least US\$5 million, 5% rate for 5 years if turnover is between US\$10 million and US\$25 million and 5-year tax holiday if turnover exceeds US\$25 million, and 15% concessionary rate thereafter.
  - Minimum investment of US\$12,500,000, US\$25,000,000 or US\$50,000,000 in large-scale new or existing projects engaged in a business relating to petroleum and petroleum products, power generation, transmission and distribution, development of highways, seaports, airports, railways, water services, public transport, agriculture or agroprocessing services (other than black tea in bulk) or any other infrastructure project approved by the BOI: tax holidays of 5 years, 6 years and 8 years, respectively, and 15% concessionary rate thereafter.
  - Minimum investment of US\$12.5 million, US\$25 million, US\$50 million, US\$75 million or US\$100 million in the following: power generation, transmission and distribution, for the development of highways, seaports, airports, public transport, railway and water services or for any other infrastructure projects approved by the BOI; and large-scale manufacturing or service industry projects or other business activity for export approved by the BOI: tax holidays of 6 years, 8 years, 10 years, 12 years and 15 years, respectively, and concessionary tax rate of 15% thereafter (for an existing BOI company making an additional investment for expansion of activities, the length of the tax holiday is reduced by the length of the tax holiday already enjoyed).
  - Minimum investment of US\$500,000, US\$1 million, US\$5 million, US\$10 million, US\$15 million, US\$20 million, US\$25 million, US\$50 million or US\$75 million in the development and management of industrial estates or special-economic zones: tax holidays of 3 years, 5 years, 6 years, 7 years, 8 years, 9 years, 10 years, 12 years and 15 years, respectively, and concessionary tax rate of 15% thereafter.
  - Minimum investment of US\$500,000, US\$1 million, US\$5 million, US\$7.5 million or US\$10 million in textile or fabric manufacturing, printing, dyeing, washing and finishing (including deemed exports, which are products sold to exporters): tax holidays of 5 years, 8 years, 10 years, 12 years, and 15 years, respectively, and concessionary rates of 10% and 15% thereafter.
  - Minimum investment of US\$150,000 in the setting up of export trading houses in the rural sector for the procurement of agricultural products, handicraft items, products manufactured with a handloom and other locally manufactured products and in the setting up of collection centers (centers set up to collect locally manufactured products that are to be sent to export trading houses) outside the Colombo and Gampaha districts: tax holiday of 5 years and concessionary tax rates of 10% and 15% thereafter.
  - Minimum investment of Rs. 30 million in new companies engaged in the manufacturing of goods (other than apparel) or the rendering of services: tax holiday ranging from 2 years to 10 years, depending on the location of the enterprise and the number of employees.

- Minimum investment of Rs. 30 million in companies taking over sick industries: tax holiday ranging from 3 years to 10 years, depending on the location.
- Minimum investment of Rs. 15 million in companies setting up expansion units for education: tax holiday ranging from 3 years to 10 years, depending on the location.
- Existing companies relocating from the Colombo or Gampaha districts to other districts: tax holiday ranging from 5 years to 10 years, depending on the location.

The Inland Revenue Act also offers the following tax concessions:

- A three-year tax holiday for businesses providing manor houses or thematic bungalows to tourists;
- A five-year tax holiday for venture capital companies investing in ordinary shares of companies engaged in projects of a pioneering nature;
- A five-year tax holiday for new undertakings of companies engaged solely in research and development with an investment of more than Rs. 2 million;
- Tax holidays ranging from 5 to 10 years for new industrial undertakings located outside the Colombo and Gampaha districts with an investment ranging from Rs. 30 million to Rs. 100 million that is made before 31 March 2009;
- A five-year tax holiday for relocated undertakings (relocated outside the Colombo and Gampaha districts) with an investment of more than Rs. 100 million that is made before 31 March 2009;
- During the period of 1 April 2008 through 31 March 2010, companies relocated outside the Colombo and Gampaha districts can elect to claim either investment relief (a deduction) for the relocation expenses or a five-year tax holiday for the profits of the undertaking;
- A five-year tax holiday for agricultural undertakings that produce agricultural, horticultural or dairy produce or convert produce into specified products;
- A five-year tax holiday for new undertakings that invest more than Rs. 50 million in the Eastern Province of Sri Lanka and generate employment opportunities for more than 50 persons; and
- A five year tax holiday on profits and income of cooperative societies.

Tax holidays granted under agreements with the Board of Investment of Sri Lanka and under the Inland Revenue Act cannot be extended. New tax holidays granted under agreements with the Board of Investment are limited to a maximum of three years. Thereafter, progressive rates of 5%, 10% and 15% apply. The limit on the length of the tax holiday does not apply to special projects identified as being of national importance. Tax holidays that were previously granted may continue until the completion of the tax-holiday period. All tax holidays require the approval of the Ministry of Finance.

Unit trusts and mutual funds are taxed at a rate of 10% on their income. Venture capital companies are taxed at a rate of 20%.

Income derived from exports of gold, gems (exported after the cutting and polishing of imported gems in raw form) and jewelry is exempt from tax. The value of gems sold at the gem auction conducted by the State Gem Corporation of Sri Lanka is taxed at a rate of 2.5%, which is the final tax on such sales.

Dividends, interest and fees derived from investments from outside Sri Lanka are exempt from income tax if the income is remitted to Sri Lanka.

The income of cooperative societies is exempt from income tax for five years.

Income earned by a company for services provided to persons or partnerships outside Sri Lanka is exempt from income tax if such income is remitted to Sri Lanka through a bank.

**Capital Gains.** Capital gains tax is not imposed in Sri Lanka.

Profits derived from sales of shares are exempt from income tax.

Profits and income accruing to employees through an Employee Share Option Scheme that is considered reasonable by the Commissioner General of Inland Revenue is exempt from income tax.

**Administration.** The normal fiscal year (year of assessment) runs from 1 April to 31 March. A company may select a different fiscal year if it obtains prior permission from the Department of Inland Revenue. Income tax is payable in four quarterly installments, which are due one and a half months after the end of each quarter. The Social Responsibility Levy (see Section D) is payable together with the quarterly tax payments. The final tax return must be submitted by 30 September after the fiscal year. Any balance of income tax due must be paid by 30 September following the end of the fiscal year.

If a company files the final tax return by 30 September, the statute of limitations for the issuance of an assessment expires 18 months after the end of the fiscal year. For returns filed after 30 September, the statute of limitations expires three years after the end of the fiscal year.

Penalties may be waived on payment of income tax owed for the preceding five years of assessment. Such taxes may be settled by payments in installments over a three-year period. If this procedure is not used, the full amount of the penalties is imposed.

**Dividends.** A dividend tax of 10% (also known as the Dividend Tax at Source) is withheld from dividends distributed out of profits included in taxable income. The 10% tax is the final tax on dividends paid to residents and nonresidents. Dividends paid by a resident company to a resident or nonresident company are not included in the assessable income of the recipient if any of the following apply:

- A withholding has been made for dividend tax;
- The dividend is exempt from income tax; or
- The dividend consists of any part of the amount of dividends received by the payer from another resident company.

Dividends received from nonresident companies are exempt from income tax.

Dividends distributed by BOI companies (companies that have entered into agreements with the BOI under which tax holidays have been granted) are subject to the dividend tax if the agreement between the BOI and the company was entered into after 6 November 2002.



A company that distributes dividends that total less than 25% of its distributable profits for the preceding fiscal year is subject to a deemed dividend tax at a rate of 15% on the difference between 33 $\frac{1}{3}$ % of the distributable profits and the total dividends distributed. The calculation of distributable profits is specified in the law.

**Interest.** The following are significant aspects of the taxation of interest:

- Withholding tax at a rate of 10% is imposed on interest paid to companies on bank deposits. Companies may offset this withholding tax against their annual income tax liability.
- Withholding tax at a rate of 15% is imposed on interest paid to nonresidents on loans.
- Withholding tax at a rate of 10% is imposed on interest paid to residents and nonresidents on corporate debt securities. This withholding tax and the 15% withholding tax mentioned in the preceding bullet are considered to be final taxes for nonresidents who do not file income tax returns in Sri Lanka.
- Tax at a rate of 10% is withheld at the point of issuance of government securities, bonds and similar instruments by the Central Bank of Sri Lanka.
- Interest income on secondary market transactions and income on corporate debt securities that are included in business income are grossed up by  $\frac{1}{6}$ , and a notional credit of 10% is granted against tax liability.
- Interest income received by a bank in Sri Lanka on loans is exempt from income tax if the loans are granted to a company for investment in or the meeting of expenditure incurred by a newly formed company outside the Colombo and Gampaha districts or by a company relocating outside the Colombo and Gampaha districts.
- Interest on investments made outside Sri Lanka is exempt from income tax.

**Foreign Tax Relief.** Foreign tax relief is available under various double tax treaties. In general, Sri Lankan tax payable (other than dividend tax) is allowed as a credit against any foreign tax computed by reference to the same income. Similar relief is available for foreign tax paid in the other treaty country.

### C. Determination of Trading Income

**General.** The assessment is based on financial statements prepared in accordance with generally accepted accounting principles.

Nonresident companies may pay income tax on a deemed profit negotiated with the Inland Revenue Department. However, they must be taxed on at least 6% of their turnover.

All expenses incurred in the production of income are allowable unless specifically prohibited. In addition, certain expenses that are specifically authorized are permitted as deductions. Nondeductible expenses include capital expenditures, personal and domestic expenses, and losses from appropriation of profits.

The following restrictions apply to the deductibility of expenses:

- The deductibility of expenses with respect to vehicles provided to employees is limited;

- 50% of advertising expenses is disallowed (other than advertising outside Sri Lanka with respect to the export trade or the provision of services for payment in foreign currency);
- Entertainment expenses are disallowed;
- The deductibility of head office expenses is restricted to the lower of the actual expenditure or 10% of the profits or income of the nonresident company;
- Foreign travel expenses can be claimed only if related to export promotion or to the provision of services for payment in foreign currency;
- Debt-to-equity rules restrict the deduction of interest paid (see Section E);
- The deduction of tax borne by an employer on behalf of an employee is limited to the actual tax paid by the employer; and
- Hire or rental expenses included in traveling expenses are disallowed.

**Qualifying Payments.** Companies may claim a deduction for qualifying payments, which include donations to the government and approved investments. The deduction for qualifying payments is limited to one-fifth of assessable income.

Donations to the government in cash are deductible in full. Unlimited qualified payment deductions are also available for investments in relocated companies outside Colombo and Gampaha districts and for investments in housing projects for shanty dwellers.

Qualifying payment deductions for donations to approved charities are limited to Rs. 500,000. Qualifying payment deductions for investments in the production of a film are restricted to Rs. 35 million. Qualifying payment deductions for investments in companies located outside the Colombo and Gampaha districts are restricted to Rs. 100 million.

**Inventories.** Inventories are normally valued at the lower of historical cost or net realizable value. For agricultural produce, inventories are valued at subsequent sale prices. Cost is usually determined on a first-in, first-out (FIFO) formula or a weighted-average cost formula.

**Provisions.** In general, no deductions are allowed for reserves or provisions. However, provisions may be deducted if the expenses provided for are paid within three years after the year of assessment.

For banks, the deductibility of a specific provision for bad debts is limited to 1% of outstanding loans of the bank at the end of the fiscal year.

**Depreciation.** Depreciation allowances are granted to the owner of the asset from the fiscal year in which the asset is first used. The allowance is computed using the straight-line method at the following rates, which are effective from 1 April 2004.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	6.67 (a)
Bridges, reservoirs, electricity and water distribution lines, toll roads	6.67
Plant and machinery	12.5

<b>Asset</b>	<b>Rate (%)</b>
Plant and machinery for certain businesses, such as health care, paper printing, gem cutting, polishing and packaging commodities for commercial purposes and rice milling	33.33
Construction machinery	25
Ships (only for the owner)	33.33
Office equipment	12.5
Commercial motor vehicles	20
Furniture	20
Computer hardware and software	
General rate	25
Computer software developed in Sri Lanka	100
Calculating equipment	25
Intangible assets (excluding goodwill)	10 (b)

- (a) This rate applies to constructed buildings and purchased industrial buildings and hotels, including condominium property acquired or constructed to be used as a commercial unit, hotel building or industrial building.
- (b) For assets other than software, acquisition and assembling expenditure qualifies for the allowance.

Depreciation allowances are generally subject to recapture on the sale of an asset to the extent the sales proceeds exceed the tax value after depreciation. Any amounts recaptured are subject to tax at the regular corporate tax rate. Losses on the sale of a depreciable asset may be claimed as trade losses.

If a capital asset is disposed of and replaced within one year, the allowance is granted on the acquisition cost, less the profit on sale of the old asset.

**Relief for Losses.** A loss incurred is deductible if, had there been a profit instead of the loss, such profit would have been assessable. Losses may be carried forward for an unlimited number of years. However, a loss carryforward may offset only 35% of the total statutory income. The balance of the losses may be carried forward to offset income in future years. Losses incurred by foreign-currency banking units and losses from horse racing may offset profit from the same source only.

Losses from a leasing business may offset only profits from the same business.

Insurance companies may set off general losses and life losses only against the same source of profits.

#### **D. Other Significant Taxes**

The table below summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate</b>
Value-added tax (VAT); imposed on all goods and services supplied in, or imported into, Sri Lanka, other than certain exempt items; input tax credit subject to certain limitations or actual input, whichever is less (with certain exceptions)	
Standard rate	15%
Basic rate (on certain essential food items)	5%

<b>Nature of Tax</b>	<b>Rate</b>
Luxury rate (on specified items such as motor vehicles, electrical equipment, jewelry and liquor)	20%
Financial services	20%
Exports and international transportation	0%
Economic Service Charge (ESC); imposed on turnover; if the turnover exceeds Rs. 7.5 million per quarter, the maximum charge is Rs. 15 million per quarter; nonresident airlines are not subject to the ESC	
Exempt undertakings (including BOI tax-holiday companies)	0.25%
Undertakings other than exporters benefiting from concessionary tax rates	0.5%
Exporters	0.25%
Wholesale and retail (other than motor vehicle and liquor trade)	0.25%
Motor vehicle and liquor wholesale and retail trade	1%
Specified distributors	0.05%
Primary conversion of any tea, rubber or coconut product	0.25%
Exports of gems and jewelry	0.25%
Apparel (including BOI companies)	
If turnover is Free-On-Board (FOB)	0.1%
If turnover is not FOB; ESC imposed on the addition to value	1%
Entrepot trade; imposed on FOB of onshore transactions	0.1%
Venture capital companies, unit trusts, mutual trusts, and companies with taxable income of less than Rs. 5 million	0.5%
Other enterprises	1%
Social Responsibility Levy; on all taxes and levies, excluding VAT, withholding taxes and personal income tax	1.5%
Share transaction levy; on turnover from listed share transactions	0.2%
Betting and gaming levy; annual amounts of the levy	
Betting business	Rs. 1 million
Racing business with live telecasts	Rs. 250,000
Racing business without live telecasts	Rs. 25,000
Gaming business (a business involving individuals playing a game for a stake)	Rs. 50 million
Cellular mobile telephone subscribers levy; applies to wireless phones; not imposed on persons with diplomatic privileges; tax imposed on the "value of supply" of cellular phone services; tax is collected by cellular phone operators from the phone users	10%
Provincial council tax; on wholesale and retail trade	1%
Debits tax; imposed on current-account and savings-account transactions, cashing of travelers checks and certificates of deposit;	

Nature of Tax	Rate
for certificates of deposit, the tax is imposed on the amount realized when the certificate of deposit is cashed	0.1%
Excise duty; on specified imports and locally manufactured products	5% to 115%
Import duty	2.5% to 28%
Surcharge on customs duty	10%
Cess on specified items	1% to 20%
Regional Infrastructure Development Levy; on motor vehicles	2.5%
Stamp duty	
On transfers of immovable property	3%/4%
On specified instruments	Various
On receipts exceeding Rs. 25,000 (imposed on all transactions other than transfers of immovable property and transactions involving specified instruments)	Rs. 25
Port and airport development levy; on declared Cost, Insurance, Freight (CIF) value of all cargo; exports and the film industry are exempt	3%
Cess fund; imposed on turnover of tourist establishments	1%
Transfer tax on purchasers of immovable property; imposed on specified companies in which more than 25% of the shares is held by persons who are not citizens of Sri Lanka	100%
Social security contributions, on employees' gross earnings	
Employees' Provident Fund (EPF); paid by	
Employer	12%
Employee	8%
Employers' Trust Fund; paid by employer	3%

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Foreign-exchange regulations are governed by the Exchange Control Act and other directives issued by the Central Bank of Sri Lanka. The regulations include the following:

- Dividends may be remitted to nonresident shareholders on the production of an Auditors' Certificate.
- Authorized dealers are permitted to maintain nonresident accounts, which may be held by nonnationals resident outside Sri Lanka, companies registered outside Sri Lanka, foreign banks and so forth.
- Facilities are provided for resident nonnationals to maintain accounts in designated foreign currencies with commercial banks in Sri Lanka.
- Foreign investors may acquire shares representing up to 49% of a company's issued capital and repatriate profits and sales proceeds (the Ministry of Finance may approve a larger percentage of up to 100%, depending on the type of investment). Subject to the approval of the Central Bank, foreign ownership of 100% is allowed in retail and wholesale trading with a minimum investment of US\$150,000 or in nondeposit financial services, such as merchant banking and venture capital companies.

- Companies approved by the Board of Investment of Sri Lanka may freely remit capital and profits.
- No restrictions are imposed on current-account transactions.
- Exporters with adequate protection against foreign-currency fluctuations may engage in foreign borrowing free of exchange-control restrictions.

**Transfer Pricing.** Under the Inland Revenue Act, if significant pricing discrepancies are considered “artificial,” the tax authorities may determine a commercially acceptable price for tax purposes. Profits and losses from transactions between associated undertakings are determined taking into account the arm’s length principle.

**Debt-to-Equity Rules.** For group companies, a debt-to-equity ratio of 3:1 applies to manufacturing companies, and a 4:1 ratio applies to other types of companies. Interest paid on loans in excess of the debt-to-equity ratio is not deductible for tax purposes.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Australia	15	10	10
Bangladesh	15	15	15
Belgium	15	10	10
Canada	15	15	10
China	15	10	10
Denmark	15	10	10
Finland	15	10	10
France	15	10	10
Germany	15	10	10
India	15	10	10
Indonesia	15	15	15
Iran	15	15	15
Italy	15	10	10/15 (a)
Japan	10	15	0/7.5 (a)
Korea	10/15 (b)	10	10
Malaysia	15	15	7.5/15 (c)
Mauritius	10/15 (e)	10	10
Nepal	15	10/15 (f)	15
Netherlands	10/15 (b)	10	10
Norway	15	10	10
Pakistan	15	10	20
Poland	15	10	10
Romania	12.5	10	10
Russian Federation	10/25	10	10
Singapore	15	10	15
Sweden	15	10	10
Switzerland	10/15 (b)	10	10
Thailand	15	10/25 (d)	15
United Arab Emirates	10	10	10
United Kingdom	15	10	10
United States (i)	15	10	5/10 (h)
Vietnam	15	10	10
Nontreaty countries	10	15	10 (g)

- (a) The lower rate applies to royalties for copyrights and cinematographic films. The higher rate applies to other royalties.  
 (b) The 10% rate applies if the recipient holds at least 25% of the payer. The 15% rate applies to other dividends.

- (c) The 7.5% rate applies to royalties for the right to use patents, designs, models, plans, secret processes, formulas or trademarks. The 15% rate applies to other royalties.
- (d) The 10% rate applies to interest received by a financial institution. The 25% rate applies to other interest.
- (e) The 10% rate applies if the beneficial owner of the dividends is a company that holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
- (f) The 10% rate applies to interest paid to banks. The 15% rate applies to other interest.
- (g) The tax applies to payments exceeding Rs. 50,000 per month or Rs. 500,000 per year.
- (h) Rent paid for the use of tangible movable property is taxed at the rate of 5%.
- (i) Sri Lanka and the United States have signed a protocol to their tax treaty, which is now in force.

Sri Lanka has also entered into agreements covering international air transport with Hong Kong, Kuwait, Oman, Saudi Arabia and the United Arab Emirates.

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**A. At a Glance**

Corporate Income Tax Rate (%)	28
Capital Gains Tax Rate (%)	28 (a)
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	30 (b)
Interest	0
Royalties from Patents, Know-how, etc.	0 (c)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

(a) See Section B for further details.

(b) This withholding tax applies to nonresidents. In general, no withholding tax is imposed on dividends paid to a foreign company that is similar to a Swedish limited liability company (*aktiebolag*) and that is not regarded as a tax-haven company. If the payer is a company listed on the stock exchange, an exemption is granted only if the recipient holds at least 10% of the voting rights of the payer for more than one year.

(c) Royalties paid to nonresidents are not subject to withholding tax, but are taxed as Swedish-source income at the normal corporate rate of 28% of the net income. However, under most treaties, the tax rate is reduced. Sweden has enacted legislation implementing the European Union (EU) directive on interest and royalties (2003/49/EC), effective from 1 January 2004. In implementing the directive, Sweden considered the most recent amendments adopted by the European Council.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Income from all business activities is aggregated as one source of income — income from business. In principle, corporate income tax (CIT) is levied on all corporate income of a company incorporated in Sweden (resident corporation), except for certain domestic and foreign dividends (see *Dividends* below). If a Swedish company markets abroad directly or through

a branch office, the foreign profits are also subject to Swedish tax, unless a treaty provides otherwise. Nonresident corporations are subject to tax on Swedish-source income only.

**Rate of Tax.** Companies pay CIT at a rate of 28%. No local income taxes are levied on corporate profits.

**Capital Gains.** No special assessment exists for capital gains, but special rules apply to the calculation of the amount of capital gains and losses.

In general, capital gains on shares held for business purposes are exempt from tax (for details regarding shares held for business purposes, see *Dividends* below).

Taxable capital gains are aggregated with other corporate business income. Capital gains are subject to tax when transactions are closed, regardless of the holding period or when payment is received.

**Administration.** The 2008 tax year covers financial years ending during 2007. A financial year may cover the following periods: 1 May to 30 April; 1 July to 30 June; 1 September to 31 August; or 1 January to 31 December. In principle, other financial years are not allowed. However, in certain situations, such as if a foreign parent company with a different financial year owns a subsidiary in Sweden, other financial years may be allowed if certain conditions are met and if permission is obtained. A financial year may extend for up to 18 months in certain circumstances, such as for a company's first or last financial year or if a company changes its financial year.

In general, the tax return must be filed no later than 2 May of the tax year. If an application is filed, an extension of time to file the return may be granted.

Advance tax payments are made in monthly installments during the year to which they relate, and the final balance is paid two years later. For example, if the financial year is the 2008 calendar year, advance tax payments are made during 2008, the tax return is filed by 2 May 2009, and any balance of tax due is paid in March 2010, at the latest.

**Dividends.** In general, dividends received from Swedish companies on shares held for business purposes are exempt from tax. Dividend distributions on other shares are fully taxable. Shares are deemed to be held for business purposes if they are not held as current assets and if any of the following conditions is satisfied:

- The shares are unlisted;
- The shares are listed and the recipient of the dividends owns at least 10% of the voting power of the payer for more than one year; or
- The shares are held for organizational purposes (important to the business of the holder or a company in the same group as the holder).

Dividends received from foreign companies are exempt from tax if the dividends satisfy the conditions for exemption with respect to dividends on shares in Swedish companies and if the distributing foreign company is equivalent to a Swedish limited liability company (*aktiebolag*).

Shares held in a company resident in a EU member state are considered to be shares held for business purposes if both of the following conditions are satisfied:

- The company owning the shares holds 10% or more of the share capital of the payer (it is irrelevant whether the shares are held as current assets); and
- The payer is listed in the European Community (EC) Directive 90/435/EEC and is required to pay one of the taxes listed in the directive.

**Foreign Tax Relief.** Under Swedish law, a Swedish company may usually claim a credit against CIT liability for comparable taxes paid abroad. Sweden applies a so-called “overall” tax credit system. However, certain tax treaties may override internal foreign tax credit rules and instead exempt foreign-source income from Swedish tax.

### C. Determination of Trading Income

**General.** Corporate income tax is based on taxable business income computed according to the accrual method of accounting. Taxable business income generally includes all worldwide income earned by a corporation. The major exceptions are capital gains and dividends on shares held for business purposes (see Section B).

**Inventories.** Inventories are valued at the lower of acquisition cost or actual value. Acquisition cost is determined using the first-in, first-out (FIFO) method. An obsolescence provision of 3% is allowed when using acquisition cost to value inventories.

**Reserves.** A profit allocation reserve allows a 25% deduction of the taxable income for the financial year. Each year’s reserve must be added to taxable income no later than six years after the year of the deduction. The reserve is based on net income before tax and includes any amounts from the allocation reserve that are added back to taxable income.

Under amendments introduced in 2005, tax is imposed annually on fictitious interest income with respect to the deferred tax amounts.

**Depreciation.** Equipment with a life of three years or less may be written off in the year of purchase. Machinery and equipment may be written off either on a straight-line basis at 20% of cost annually or on a declining-balance basis at 30% of the current tax value. In any one year, the same method must be used for all machinery and equipment. However, companies can switch to a different method each year. The above methods may be used only if the same depreciation method is used in the financial statements. If this condition is not satisfied, a third method, which is also based on the remaining depreciable value, is available. Under this method, companies may choose any percentage, up to a maximum of 25%. The same amortization rules that govern machinery apply to patents, trademarks, purchased goodwill and other intangible property.

Depreciation of buildings is straight-line over the building’s expected life. In general, commercial buildings may be depreciated at 2% to 5% annually, factory buildings at 4% and office buildings at 2%. Buildings subject to greater wear and tear may be depreciated at higher rates.

If depreciable machinery and equipment are sold, the proceeds reduce the depreciable base for the remaining machinery and equipment.

**Relief for Losses.** Losses may be carried forward indefinitely. Losses may not be carried back.

The tax law includes rules restricting the use of old tax losses of acquired companies.

In general, the possibility of offsetting the losses of an acquired company through a group contribution (see *Groups of Companies* below) may in certain circumstances be restricted during a five-year period. The rules also include a restriction under which the amount of losses that may be used is limited to twice the amount paid for the shares. Special restrictions also apply to the possibility of using losses with respect to mergers.

**Groups of Companies.** There is no consolidated treatment whereby all companies in a group may be treated as a single taxable entity. However, rules permit income earned by companies in a corporate group to be distributed within the group through the use of group contributions, which are deductible for the paying corporation and taxable income for the receiving corporation. In general, group contributions may be made between Swedish group companies if ownership of more than 90% exists during the entire financial year. This rule applies even if a foreign parent or subsidiary is in the group structure. A Swedish permanent establishment of a foreign company resident in a European Economic Area (EEA) state is treated as a Swedish company for purposes of the group contribution rules.

#### D. Other Significant Taxes

The table below describes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), on goods (including imported goods but excluding exported goods) and services, unless specifically exempt by law; based on sales price excluding VAT	
Standard tax rate	25
Rate on hotel services and food	12
Rate on movies, books, newspapers, sports events, passenger transportation and copyrights	6
Social security contributions, on salaries, wages and the assessed value of benefits in kind (for 2007); paid by employer	
General rate	32.42
Rate for employees aged 18 to 25	22.71
Pension contribution on salaries, wages and the assessed value of benefits in kind; paid by employee on amounts up to SEK 370,400 (for 2007)	7
Social security contributions, on salaries, wages and the assessed value of benefits in kind (for 2007); paid by	
Employer	32.42
Employee (on amounts up to SEK 370,400)	7

Nature of Tax	Rate (%)
Special salary tax, on earnings not included in the base for social security contributions (primarily salaries and other income paid to individuals who are 65 years old or older at the beginning of the income year); paid by the employer (for 2007)	24.26

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Sweden has eliminated foreign-exchange controls. However, payments abroad and certain payments within Sweden that exceed SEK 150,000 must be reported to the Swedish Tax Agency.

**Controlled Foreign Companies.** A Swedish company that holds or controls, directly or indirectly, at least 25% of the capital or voting rights of a foreign low-taxed entity (controlled foreign company, or CFC) is subject to current taxation in Sweden on its share of the foreign entity's worldwide profits if the ownership or control exists at the end of the Swedish company's fiscal year. Foreign entities are considered to be low-taxed if their net income is taxed at a rate of less than 15.4% on a base computed according to Swedish accounting and tax rules. However, the CFC rules do not apply to foreign entities that are resident and subject to corporate income tax in jurisdictions on the so-called "white list." If Sweden has entered into a tax treaty with a jurisdiction on the white list, an additional requirement for the exemption is that the foreign entity and its income be eligible for treaty benefits.

**Antiavoidance Legislation.** A general antiavoidance act applies in Sweden. The act is considered a source of insecurity to taxpayers because it limits the predictability of the tax law. Under the act, a transaction may be adjusted for tax purposes if all of the following conditions are met:

- The transaction, alone or together with other transactions, is part of a procedure that provides a substantial tax advantage to the taxpayer;
- The taxpayer, directly or indirectly, participated in the transaction or transactions;
- Taking into account all of the circumstances, the tax advantage can be considered to be the predominant reason for the procedure; and
- A tax assessment based on the procedure would be in conflict with the purpose of the tax law, as it appears from the general design of the tax rules, the rules that are directly applicable or the rules that have been circumvented through the procedure.

**Transfer Pricing.** The Swedish law on transfer pricing is based on the arm's length principle. As a result, in general, the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines apply. Under the transfer-pricing law, the Swedish Tax Agency may adjust the income of an enterprise if its taxable income in Sweden is reduced as a result of contractual provisions that differ from those that would be agreed to by unrelated parties and if the following three additional conditions are met:

- The party to which the income is transferred is not subject to tax in Sweden;

- It is reasonably established that a community of economic interest exists between the parties; and
- It is clear from the circumstances that the contractual provisions were not agreed upon for reasons other than the community of economic interest.

If the conditions under the law are met, the Swedish Tax Agency may increase the income of an enterprise by the amount of the reduction resulting from the contractual provisions that were not determined at arm's length.

Under Swedish rules, a Swedish company must have formal transfer-pricing documentation in place with respect to cross-border transactions.

**Debt-to-Equity Rules.** No thin-capitalization rules exist in Sweden. The Companies Act, however, requires the compulsory liquidation of a company if more than 50% of the share capital is lost without replacement of new capital.

## F. Treaty Withholding Tax Rates

Interest payments are not subject to withholding tax under Swedish internal law. Consequently, the following table provides treaty withholding tax rates only for dividends and royalties.

Residence of Recipient	Dividends		Royalties (a)	
	Normal Treaty Rate	Reduced Rate (b)(d)	Normal Treaty Rate	Reduced Rate
	%	%	%	%
Albania	15	5	5	—
Argentina	15	10	15	10 (c)
Australia	15	—	10	—
Austria	10	5	10	0
Bangladesh	15	10	10	—
Barbados	15	5	5	—
Belarus	10	5 (c)	10	5 (c)
Belgium	15	5	0	—
Bolivia	15	0	15	—
Botswana	15	—	15	—
Brazil	25	—	25	—
Bulgaria	10	—	5	—
Canada	15	10 (c)	10	0
China	10	5	10	7
Cyprus	15	5	0	—
Czechoslovakia (e)	10	0	5	0
Denmark	15	0	0	—
Egypt	20	5	14	—
Estonia	15	5	10	5
Faeroe Islands	15	0	0	—
Finland	15	0	0	—
France	15	0	0	—
Gambia	15	5 (c)	12.5	5
Germany	15	0	0	—
Greece	0	—	5	—
Hungary	15	5	0	—
Iceland	15	0	0	—
India	10	—	10	—
Indonesia	15	10	15	10

Residence of Recipient	Dividends		Royalties (a)	
	Normal Treaty Rate	Reduced Rate (b)(d)	Normal Treaty Rate	Reduced Rate
	%	%	%	%
Ireland	15	5	0	—
Israel	15	5	28	0
Italy	15	10	5	—
Jamaica	22.5	10	10	—
Japan	15	5 (c)	10	—
Kazakhstan	15	5	10	—
Kenya	25	15	20	—
Korea	15	10	15	10
Latvia	15	5	10	5
Lithuania	15	5	10	5
Luxembourg	15	0	0	—
Macedonia	15	0	0	—
Malaysia	15	0	8	—
Malta	15	0	0	—
Mauritius	15	5	15	—
Mexico	15	5 (c)	10	—
Namibia	15	5 (c)	15	5
Netherlands	15	0	0	—
New Zealand	15	—	10	—
Norway	15	0	0	—
Pakistan	30	15	10	—
Philippines	10	0	15	—
Poland	15	5	10	—
Portugal	10	0	10	0
Romania	10	—	10	—
Russian Federation	15	5	0	—
Singapore	15	10	0	—
South Africa	15	7.5 (c)	0	—
Spain	15	10	10	—
Sri Lanka	15	—	10	—
Switzerland	15	0	0	—
Taiwan	10	—	10	—
Tanzania	25	15	20	—
Thailand	20	15	15	—
Trinidad and Tobago	20	10	20	0
Tunisia	20	15	15	5
Turkey	20	15	10	—
Ukraine	10	5 (c)	10	—
United Kingdom	5	0	0	—
United States	15	0	0	—
Venezuela	10	5	10	7
Vietnam	15	10 (c)	15	5
Yugoslavia (f)	15	5	0	—
Zambia	15	5	10	—
Zimbabwe	20	15	10	—
Nontreaty countries	30	—	0	—

(a) Royalties paid to nonresidents are not subject to withholding tax, but are taxed as Swedish-source income at the normal corporate rate of 28%. However, under certain treaties, the rate of tax may be reduced.

- (b) The reduced tax rate applies if a parent owns at least the minimum percentage of the paying company prescribed by the relevant treaty.
- (c) The rate of tax is further reduced if specific conditions are satisfied.
- (d) Under Swedish domestic law, dividends paid to a foreign company (other than a tax-haven company) that is equivalent to a Swedish company are exempt from withholding tax if the shares are held for business purposes. Unlisted shares in Swedish companies are normally considered to be held for business purposes unless they are regarded as inventory. If the shares are listed, they must also be held for at least 12 months and the holding must exceed 10% of the voting rights. A special exemption applies if the recipient fulfills the conditions in Article 2 of the EC Parent-Subsidiary Directive and if the holding is at least 15% of the share capital.
- (e) Sweden applies the treaty with the former Czechoslovakia to the Czech Republic and the Slovak Republic.
- (f) Sweden applies the treaty with the former Yugoslavia to Bosnia-Herzegovina, Croatia, Serbia and Montenegro, and Slovenia. Sweden has entered into a tax treaty with Macedonia. The withholding rates under the treaty are listed in the table.

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**A. At a Glance**

Corporate Income Tax Rate (%)	12.5 to 24.5 (a)
Capital Gains Tax Rate (%)	– (b)
Branch Tax Rate (%)	12.5 to 24.5 (a)
Withholding Tax (%) (c)	
Dividends	35
Interest	35 (d)
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0 (e)
Carryforward	7 (e)

- (a) The rates reflect the maximum aggregate effective tax burden of ordinarily taxed companies and are composed of federal, cantonal and communal (municipal) taxes. Approximately 7.8% of the rates relate to the federal tax. The rates depend on the canton and commune in which the taxable entity performs its activities. Lower rates are available for privileged companies described in Section E.
- (b) See Section B.
- (c) The withholding tax rates may be reduced under the Switzerland-European Union (EU) agreement (see Section E) and under double tax treaties (see Section F).
- (d) Withholding tax is levied on bank interest and interest from publicly offered bonds, debentures and other written instruments of indebtedness issued by a Swiss borrower, but normally not on interest on commercial loans, including loans from foreign parents to Swiss subsidiaries.
- (e) Losses may be carried forward seven years. Losses may not be carried back. See Section C.

**B. Taxes on Corporate Income and Gains**

**Income Tax.** Switzerland is a confederation of 26 cantons (states). Taxes are levied at the federal and cantonal/communal levels. As a result of this multilayered tax system, no standard tax rates exist. Under the Swiss income tax system, earnings are taxed at the corporate level and, to the extent profits are distributed as dividends, again at the shareholder's level. However, see *Dividends* below for details regarding the participation exemption.

In general, a resident corporation is a corporation that is incorporated in Switzerland. In addition, a corporation incorporated in a foreign country is considered a resident of Switzerland under Swiss domestic law if it is effectively managed and controlled in Switzerland.

Resident companies are subject to corporate tax on worldwide income. Income realized by a foreign permanent establishment of a Swiss company or derived from foreign real estate is excluded from taxable income, but must be included in determining the applicable tax rate. Losses incurred by a foreign permanent establishment are deductible from taxable income. However, if a foreign permanent establishment of a Swiss company realizes profits in the seven years following the year of a loss and if the permanent establishment can offset the loss against such profits in the foreign jurisdiction, the Swiss company must add the amount of losses offset in the country of the permanent establishment to its Swiss taxable income.

A company not resident in Switzerland is subject to Swiss income tax if it has a permanent establishment in Switzerland.

*Tax Harmonization Act.* The Tax Harmonization Act (THA) sets certain minimum standards for cantonal/communal taxes. However, cantonal/communal tax rates are not harmonized under the THA.

**Rates of Corporate Tax.** The federal corporate income tax is levied at a flat rate of 8.5% of taxable income. Because taxes are deductible, the effective federal corporate income tax rate is approximately 7.8%.

Cantonal/communal tax rates vary widely. The cantonal/communal tax rates are usually a certain percentage (known as “multipliers”) of the relevant cantonal statutory tax rates. The total effective maximum tax burden, which consists of federal, cantonal and communal taxes, ranges from 12.5% to 24.5%, depending on the canton and commune in which the taxable entity is located.

**Tax Incentives.** In Switzerland, tax incentives are granted to companies either by the cantons or by both the cantons and the federation. Except for the limitation on the duration of tax incentives to a maximum period of 10 years, the cantons are autonomous in granting cantonal/communal tax incentives to the following:

- Newly established enterprises; and
- Existing companies that substantially change their business if such change corresponds to the incorporation of a new enterprise.

Tax incentives at the federal level require approval of the federation. Until 2007, tax incentives at the federal level were available under the “Lex Bonny” Decree. Effective from 1 January 2008, incentives at the federal level are governed by the New Regional Policy Decree. However, the criteria for granting federal incentives generally remain the same. The following are the criteria:

- Number of new jobs created;
- Extent of the planned investment within the economic area;
- Extent of planned or executed purchases and ordering of goods and services; and
- Collaboration with research institutes and educational institutions that are directly connected to the planned project.

The federation and the cantons grant partial or full tax holidays.

Under the New Regional Policy Decree, the cantons will remain autonomous with regard to granting cantonal/communal incentives. Under the new law, the areas that had been identified as areas of economic development under the existing law will be redefined in close cooperation between the cantons and the federation. Incentives granted under the existing law will remain in place during the period for which they were granted.

**Capital Gains.** Capital gains are generally taxed as ordinary business income at regular income tax rates. Different rules may apply to capital gains on real estate or to real estate companies at the cantonal/communal level.

Capital gains derived from dispositions of qualifying investments in subsidiaries qualify for the participation exemption (further details regarding the participation exemption are provided in *Dividends* below). Under the participation exemption rules for capital gains, the parent company must sell at least 20% of the share capital of the subsidiary and, at the time of the disposal, it must have held the shares for at least one year.

**Administration.** Income tax is generally assessed on the income for the current tax year, which corresponds to the corporation's financial year. The financial year need not correspond to the calendar year. Corporations are required to close their books once a year and file annual returns.

The cantonal deadlines for filing the corporate tax return vary, and extensions may be obtained. The federal and cantonal tax returns are generally filed together.

Corporations pay income tax in one lump-sum payment or in installments. The deadline for the payment of federal income tax is 31 March of the year following the tax year. The deadline for cantonal/communal taxes is usually between 30 June and 31 December.

**Dividends.** Dividends received are taxable as ordinary income. However, under the participation exemption rules, if the recipient of the dividend owns at least 20% of the shares of the distributing corporation or if the recipient holds shares with a market value of at least CHF 2 million, the federal tax liability is reduced by a proportion of dividend income (as defined by the law) to the total taxable income.

The participation exemption also applies at the cantonal/communal level. However, income received by qualifying holding companies is fully exempt from cantonal/communal corporate income taxes (see Section E).

Swiss companies distributing dividends are generally required to withhold tax at a rate of 35%. However, under the Net Remittance Procedure, Swiss companies distributing qualifying dividends may apply the treaty withholding rates prospectively without making the full 35% prepayment. The Net Remittance Procedure applies to dividends distributed on "substantial participations." These are participations that qualify for an additional reduction or a full exemption from Swiss withholding tax under a comprehensive income tax treaty or under the Switzerland-EU agreement (see Section E). To distribute dividends under the Net Remittance Procedure, companies must file an application with the Swiss Federal Tax Administration before distributing dividends.

**Intercantonal Tax Allocation.** If a company operates in more than one canton, that is, the head office is in one canton and permanent establishments are in other cantons, its taxable earnings are allocated among the different cantons. The tax rate for each canton is based on the aggregate profit. The allocation method depends on the type of business of the company. The determination of the method is based on case law, which is governed by a constitutional guarantee against intercantonal double taxation.

**Foreign Tax Relief.** Income from foreign permanent establishments of a Swiss company is not taxable in Switzerland. The international allocation of profit is based on intercantonal rules, unless a tax treaty provides for a different method. For the treatment of losses of foreign permanent establishments, see *Income Tax* above.

### **C. Determination of Taxable Income**

**General.** The net profit shown in commercial financial statements generally serves as the basis for income taxation. However, the tax

authorities may require adjustments to correct for certain items such as excessive depreciation and provisions.

Federal and cantonal/communal corporate taxes paid or due are deductible for income tax purposes.

**Inventories.** Any system of inventory pricing that is in accordance with accepted business practice and is used consistently by the taxpayer is presumed to be acceptable by the tax authorities.

**Provisions.** Swiss federal and cantonal regulations provide that a company may record a general tax-deductible reserve amounting to one-third of the inventory valuation.

Provisions to cover doubtful accounts receivable and expected liabilities are generally allowed for tax purposes if they are commercially justifiable.

In general, a reserve of 5% of accounts due from Swiss debtors and 10% of those due from foreign debtors is allowed, without substantiation. In addition, provisions for specific accounts may be established if economically justifiable.

**Depreciation.** Depreciation may be calculated using the straight-line or the declining-balance method. For federal tax purposes, the following are some of the maximum rates set forth in the official guidelines.

Asset	Method	
	Declining-Balance (%)	Straight-Line (%)
Commercial buildings	3 to 4	1.5 to 2
Industrial buildings	7 to 8	3.5 to 4
Office furniture	25	12.5
Office machines	40	20
Data-processing equipment	40	20
Machinery	30	15
Motor vehicles	40	20
Intangibles	40	20

Some cantons have particularly favorable provisions (for example, immediate or one-time depreciation).

**Relief for Losses.** Income of the current year may be offset against losses incurred in the preceding seven years, to the extent that such losses have not yet been used to absorb profits of prior years. No loss carryback is allowed.

**Groups of Companies.** Except for value-added tax purposes, the concept of a consolidated or group return is unknown in Swiss tax law. Each corporation is treated as a separate taxpayer and files its own return.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on deliveries of goods and services, including imports of goods and services	
Standard rate	7.6
Hotel and lodging services (overnight stays only)	3.6



Nature of Tax	Rate (%)
Preferential rate (applicable to items such as foodstuffs, farming supplies, agricultural products, medicines and newspapers)	2.4
Exports	0
Net equity tax	
Federal rate	0
Cantonal/communal rates (varies among the cantons and depends on the relevant tax regime and, if applicable, the multiplier applied by the canton/commune; in some cantons, the cantonal/communal equity tax can be credited against the corporate income tax)	0.001 to 0.6
Payroll taxes	
Social security contributions, on gross salary; paid by	
Employer	5.05
Employee	5.05
Company pension fund; rate varies by plan (compulsory and optional) and age of employee; examples of rates, paid by	
Employer	10
Employee (female, ages 32 to 41; male, ages 35 to 44)	10
Unemployment insurance, imposed on annual gross salary of up to CHF 126,000; paid by	
Employer	1
Employee	1
Family allowance; paid on salary by employer; imposed by various cantons at different rates	Various
Accident insurance, rates vary depending on extent of coverage and the risk of the business	
Occupational; paid by employer (approximate rates)	0.04 to 17.19
Non-occupational; employer may elect to charge all or part of these premiums to employees (approximate rates)	1.01 to 2.10
Stamp duties	
One-time capital contribution tax, on Swiss shares (the rate is 0% on shares issued within the scope of qualified mergers and reorganizations); for incorporations and capital increases, the first CHF 1 million is exempt from tax	1
Securities turnover tax; on the sale or exchange of taxable securities involving a Swiss-registered securities dealer (as defined by the law) that acts in the capacity of a broker or dealer or that trades on its own account; the onus for payment of the securities turnover tax is on the Swiss securities dealer, but it is customary that the securities turnover tax be charged to the ultimate buyer and/or seller; several types of parties are exempt, including investment fund managers and foreign	

Nature of Tax	Rate (%)
companies listed on a recognized stock exchange; several types of transactions are exempt, including the brokering of foreign bonds between foreign parties and qualifying internal group transactions	
Securities issued by a Swiss party	0.15
Securities issued by a foreign party	0.3
Stamp duty, on redeemable capital insurance with single premium for Swiss policyholders	2.5

## E. Miscellaneous Matters

**Domiciliary and Mixed Companies.** Domiciliary and mixed companies are primarily engaged in activities abroad. The profits derived by these companies from non-Swiss sources are taxed at substantially reduced rates at the cantonal/communal level. Domiciliary and mixed companies can be used for sales, financing, holding of intellectual property and other activities focusing primarily on non-Swiss markets. Relief at the federal level is available in several cantons for headquarter companies and principal companies (see *Principal Companies* below) with sufficient substance.

Under the THA (see Section B), for cantonal taxes, the following tax rules apply to domiciliary and mixed companies:

- Income derived from a qualifying participation (20% of the share capital or fair market value of CHF 2 million), including capital gains resulting from step-ups in the tax basis of such investments, is exempt from tax.
- Income derived from Swiss sources not described in the item above is taxed at ordinary rates (this rule applies only to mixed companies because domiciliary companies do not derive Swiss-source income).
- Income derived from non-Swiss sources is also taxed at ordinary rates. However, the tax base is substantially reduced by the application of rules that take into account the significance of administrative activities performed by the Swiss company (this depends on the intensity of its physical presence in Switzerland and the level of its economical affinity to Switzerland). As a result of these rules, approximately 10% to 30% of the non-Swiss income is subject to the ordinary cantonal and municipal tax, while the remaining non-Swiss income is exempt from tax.

**Holding Companies.** Holding companies may take advantage of a special status for cantonal and communal tax purposes. At the cantonal/communal level, holding companies are completely exempt from corporate income tax. Consequently, all types of income derived from financial participations, such as dividends, interest and capital gains, are exempt at the cantonal/communal level. At the federal level, tax relief is granted with respect to qualifying dividends and capital gains (that is, no general relief is granted; also see Section B).

**Service Companies.** For Swiss resident companies providing coordination or management services to a multinational group (technical, administrative or scientific assistance including research and promotion activities), Swiss tax law requires that a share of the profits accruing to the group be allocated to the Swiss company. Before 2004, a safe harbor rule provided that the profit of service companies subject to tax in Switzerland was generally

deemed to be cost plus 5%. Switzerland abandoned this safe harbor rule in order to apply the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Relief is granted to service companies for cantonal and communal tax purposes in accordance with the rules governing mixed companies (see *Domiciliary and Mixed Companies* above).

**Principal Companies.** Federal guidelines provide a special federal tax regime for principal companies. A Swiss company within an international group is treated as a principal company if it assumes risks and responsibilities for certain activities, including the following: purchasing; planning of research and development (R&D), manufacturing and distribution; development of marketing strategies; logistics; treasury; finance; and administration.

In structures involving principal companies, manufacturing is typically performed outside of Switzerland by group companies or third parties on a contract manufacturing or cost-plus basis on the instruction, and for the account, of the principal. Sales are made exclusively in the name of international group distribution companies for the account of the principal company. These distribution companies must act exclusively as agents with the authority to conclude contracts on behalf of the principal company (commissionaires) or as limited-risk (stripped-buy/sell) distributors because of the related risks borne by the principal.

The federal guidelines can result in an attractive combined federal and cantonal/communal effective tax rate that may be as low as approximately 5% to 10%, depending on the particular set-up and the location. In addition, depending on the substance and the location, principal companies may qualify for tax holidays of up to 10 years.

**Debt-to-Equity Rules.** Under the federal thin-capitalization guidelines, the minimum capitalization is calculated based on the maximum indebtedness of all of the assets. For each type of asset, only a specified percentage may be financed with debt from related parties (directly or indirectly). Consequently, the debt-to-equity ratio results from the sum of the maximum amount of indebtedness of all of the assets. The following are examples of the maximum percentages of indebtedness: cash, 100%; accounts receivable, 85%; participations, 70%; manufacturing plants, 70%; and intangibles, 70%. The required equity is calculated on the basis of the fair-market value of all assets, as stated in the balance sheet at the end of the business year.

For federal tax purposes, the thin-capitalization rules apply only to the disallowance of the interest deduction, because no capital tax is imposed at the federal level.

Only a few cantons have explicit legal provisions concerning minimum capitalization requirements. Companies are deemed to have avoided tax if the equity is insufficient and if loaned funds are directly exposed to business risk. Many cantons apply the federal thin-capitalization guidelines described above. In other cantons, a ratio of 6:1 between debt and equity may be used; non-interest-bearing debt is ignored. The 6:1 ratio is commonly applied to foreign controlled corporations that do not engage in industrial activities.

Interest rates may not exceed arm's length rates (the Swiss Federal Tax Administration publishes safe haven rates periodically).

In certain cantons, specific debt-to-equity rules apply to real estate companies.

**Foreign-Exchange Controls.** Switzerland does not impose foreign-exchange controls.

**Transfer Pricing.** Switzerland does not have statutory transfer-pricing rules. Intercompany charges should be determined at arm's length. The tax authorities accept the transfer-pricing methods described by the OECD. In particular, cost-plus charges should be justified and documented with appropriate ranges of mark-ups for each individual case.

Special guidelines apply concerning minimum and maximum interest on loans granted to or from shareholders or related parties.

Companies may discuss transfer-pricing issues with the tax authorities, but generally do not apply for advance pricing agreements.

**Reorganizations.** The Swiss Merger Law of 3 October 2003 authorizes companies to carry out tax-neutral reorganizations (mergers, demergers and transformations) if certain conditions are met, including the following:

- Liability to Swiss tax continues after the reorganization; and
- Assets and liabilities are transferred and acquired at their previous value for income tax purposes.

**Double Tax Treaties.** Switzerland has entered into more than 70 treaties for the avoidance of double taxation. The treaties generally follow the OECD model treaty, with the exception of the agreements concluded before 1960.

In 1962, the federal council issued an antiabuse decree under which the Swiss tax authorities unilaterally restricted the use of the Swiss tax treaty network by Swiss companies that are controlled by foreign residents. However, in 1999 and 2001, the antiabuse decree was relaxed substantially. As a result, the following Swiss companies are no longer subject to the restrictions imposed in 1962:

- Companies that are engaged in an active business;
- Holding companies;
- Companies of which at least 50% of their shares (by voting rights and nominal value) is quoted and regularly traded on a Swiss stock exchange or on a foreign stock exchange with identical or comparable regulations and standards; and
- Companies of which at least 50% of their shares (by voting rights and nominal value) is held directly by a Swiss company or several Swiss companies and the Swiss company or all of the Swiss companies are quoted and regularly traded on a Swiss stock exchange or on a foreign stock exchange with identical or comparable regulations and standards.

In addition, as a result of the revisions of the decree, companies not listed above are usually no longer required to make mandatory distributions of 25% of their passive income.

If a company that remains subject to the antiabuse decree derives dividends, interest or royalties from sources in a country having

a double tax treaty with Switzerland, it must have taxable earnings equal to at least 50% of such income in order to benefit from the treaty.

With respect to the Switzerland-United States tax treaty, the Swiss domestic anti-abuse decree does not apply (that is, only the limitations-on-benefits provisions of the treaty are relevant).

**Switzerland-European Union Agreement.** The Switzerland-EU agreement on savings taxation took effect on 1 July 2005. In general, it provides for Switzerland measures equal to those contained in the European Community (EC) Parent Subsidiary Directive of 1990. Under these measures, dividends paid (similar rules also apply to intercompany interest and royalties) are not subject to tax in the country of source if the following conditions are satisfied:

- The parent company has a direct minimum holding of 25% of the capital of the payer of the dividends (subsidiary) for at least two years;
- Both the parent company and the subsidiary are subject to corporate tax without being exempted and both are in the form of a limited company;
- One company is tax resident in an EU member state and the other company is tax resident in Switzerland; and
- Neither company is tax resident in a third state under a double tax treaty with that state.

The above rules do not prevent the application of measures for the prevention of fraud and abuse under domestic law or an agreement. A recent directive of the Swiss Federal Tax Administration refers to certain areas that might be covered by such measures, but does not go into details. The following are the areas:

- Beneficial ownership;
- Tax fraud and fraudulent reduction of withholding taxes; and
- Abuse of law.

Existing double tax treaties between Switzerland and EU member states that provide for more favorable tax treatment remain applicable.

The Switzerland-EU agreement applies to all EU member states, including the EU Accession states of 1 May 2004, and Bulgaria and Romania. It also applies to the following jurisdictions:

- Guadeloupe, Guyana, Martinique and Reunion (France);
- Gibraltar (United Kingdom);
- Azores and Madeira (Portugal); and
- Canary Islands (Spain).

The Switzerland-EU agreement will be extended to other territories that join the EU in the future. Dividends paid from Switzerland to Estonia qualify for relief, effective from 1 July 2005. However, transitional rules apply to Estonian-source dividends until 31 December 2008.

Relief from withholding tax under the Switzerland-EU agreement requires filing and approval of Form 823C by the Swiss Federal Tax Administration. The Swiss Federal Tax Administration uses beneficial ownership or substance as a criterion for its examination of Form 823C. An approval remains valid for a three-year period. Reimbursements of Swiss withholding tax on dividends paid before the expiration of the two-year minimum holding period requires filing and approval of Form 70.

The Switzerland-EU agreement also applies to all interest payments made by a paying agent in Switzerland to an individual resident for tax purposes in an EU member state. Switzerland applies a system of withholding tax, with an initial rate of 15%, increasing to 20%, and then to 35% from 2011. The Switzerland-EU agreement allows foreign bank customers to choose between a system of withholding tax and a declaration to the tax authorities (voluntary declaration).

## F. Treaty Withholding Tax Rates

Effective from 1 July 2005, Switzerland benefits from measures equivalent to those found in the European Community (EC) Parent-Subsidiary Directive and the EC Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Subject to fulfillment of the respective requirements, the taxpayer may apply either the Switzerland-EU agreement or an applicable double tax treaty.

<b>Residence of Recipient</b>	<b>Dividends %</b>	<b>Interest (a) %</b>	<b>Royalties (b) %</b>
Albania	5 (d)	5	0
Argentina	10 (d)	12	0 (ll)
Australia	15	10	0
Austria	0 (t)(gg)	0 (gg)	0
Azerbaijan	5 (jj)	0/5/10 (kk)	0
Belarus	5 (d)	8 (k)	0
Belgium	10 (d)(gg)	10 (gg)	0
Bulgaria	5 (d)(gg)	10	0
Canada	5 (g)	10	0
China (w)	10	10	0
Côte d'Ivoire	15	15	0
Croatia	5 (d)	5	0
Czech Republic	5 (d)(gg)	0 (gg)	0
Denmark	0 (gg)	0 (gg)	0
Ecuador	15	10	0
Egypt	5 (d)	15	0
Estonia	5 (dd)(gg)	10 (gg)	0
Finland	0 (h)(gg)	0 (gg)	0
France	0 (e)(gg)	0 (gg)	0
Germany	0 (j)(gg)	0 (c)(gg)	0
Greece	5 (d)(gg)	10 (gg)	0
Hungary	10 (gg)	10 (gg)	0
Iceland	5 (d)	0	0
India	10	10	0
Indonesia	10 (d)	10	0
Iran	5 (i)	10 (m)	0
Ireland	0 (gg)	0 (gg)	0
Israel	5 (g)	10 (k)	0
Italy	15 (gg)	12.5 (gg)	0
Jamaica	10 (s)	10	0
Japan	10 (d)(ff)	10	0
Kazakhstan	5 (bb)	10	0
Kuwait	15	10	0
Kyrgyzstan	5 (d)	5	0
Latvia	5 (o)(gg)	10 (gg)	0
Lithuania	5 (o)(gg)	10 (gg)	0
Luxembourg	0 (q)(gg)	10 (gg)	0

<b>Residence of Recipient</b>	<b>Dividends %</b>	<b>Interest (a) %</b>	<b>Royalties (b) %</b>
Macedonia	5 (d)	10 (cc)	0
Malaysia	5 (d)	10	0
Mexico	5 (d)	15 (p)	0
Moldova	5 (d)	10	0
Mongolia	5 (d)	10	0
Morocco	7 (r)	10	0
Netherlands	0 (d)(n)(gg)	5 (gg)	0
New Zealand	15	10	0
Norway	0 (d)	0	0
Pakistan	15 (ee)	15	0
Philippines	10 (s)	10	0
Poland	5 (d)(gg)	10 (gg)	0
Portugal (x)	10 (d)(gg)	10 (gg)	0
Romania	10 (gg)	10	0
Russian Federation	5 (t)	10 (k)	0
Serbia and Montenegro	5 (t)	10	0
Singapore	10 (d)	10	0
Slovak Republic	5 (r)(gg)	10 (gg)	0
Slovenia	5 (r)(gg)	5 (gg)	0
South Africa	7.5	10 (f)	0
South Korea	10 (d)	10	0
Spain	0 (gg)(hh)	0 (gg)(hh)	0
Sri Lanka	10 (d)	10 (k)	0
Sweden	0 (d)(gg)	5 (gg)	0
Thailand	10 (y)	0/10/15 (u)	0
Trinidad and Tobago	10 (l)	10	0
Tunisia	10	10	0
Ukraine	5	10	0
United Kingdom (ii)	5 (d)(gg)	0 (gg)	0
United States	5 (g)	0	0
Uzbekistan	5 (o)	10	0
Venezuela	0 (z)	0/5 (aa)	0
Vietnam	7 (v)	10	0
Nontreaty countries	35	35	0

- (a) Withholding tax is imposed only on bank interest and on interest from publicly offered bonds, debentures and other instruments of indebtedness issued by a Swiss borrower, but not on interest on commercial loans, including loans from foreign parents to Swiss subsidiaries.
- (b) Under Swiss domestic law, no withholding tax is imposed on royalties, management fees, rents, licenses and technical assistance fees and similar payments.
- (c) The rate is 5% or 15% on interest from profit-sharing bonds or silent partnerships, depending on the extent of the participation.
- (d) This rate applies if the shareholding by a corporation is at least 25%. The net treaty withholding rate is increased to 15% if shareholding is less than 25%.
- (e) The 0% rate generally applies if the shareholding of a corporate recipient of dividends is at least 10%. The rate is increased to 15% if the shareholding of a corporate recipient is less than 10% or if the corporate recipient is controlled by persons that are not resident in Switzerland or the EU and neither the payer nor the recipient of the dividends is listed on a stock exchange. The 15% rate also applies to dividends paid to individuals.
- (f) Treaty relief is granted only if the interest is taxed in South Africa; otherwise, the full rate of 35% applies.
- (g) This rate applies to dividends paid to corporations with a shareholding of at least 10% of the payer.
- (h) This rate applies to dividends paid to corporations with a shareholding of at least 20% of the payer. The rate is 10% for individuals and for corporate shareholders owning less than 20% of the payer of the dividends.

- (i) The 5% rate applies if the recipient of the dividends is a corporation with a shareholding of at least 15%. A 15% rate applies to other dividends.
- (j) The 0% rate generally applies if the recipient of the dividends is a corporation that has a shareholding of at least 20%. A rate of 15% applies if the recipient of the dividends is a corporation that has a shareholding of less than 20% or if the recipient of the dividends is an individual.
- (k) A rate of 5% applies to interest on bank loans.
- (l) Rate is applicable if shareholding by a corporation is at least 10%. The net treaty withholding rate is increased to 20% if shareholding is less than 10%.
- (m) A 0% rate applies to interest on bank loans.
- (n) Subject to an antiavoidance provision in the treaty.
- (o) The 5% rate applies if the recipient of the dividends is a corporation with a shareholding of at least 20%. The rate is increased to 15% in all other cases.
- (p) For interest paid to banks, the withholding tax rate is reduced to 10%.
- (q) The rate of 0% applies to corporate recipients if the shareholding is at least 25% and the participation has been held for at least two years. A rate of 5% applies to corporate recipients if the shareholding is at least 25% and the participation has been held for less than two years. For other corporate recipients and for individual shareholders, the rate is 15%.
- (r) The rate is 15% if the shareholding of the recipient is less than 25%.
- (s) This rate applies to dividends paid to corporations holding at least 10% of the voting power of the payer. A 15% rate applies to other dividends.
- (t) This rate applies if the shareholding of the recipient is at least 20%. For other dividends, the rate is 15%.
- (u) The 0% rate applies to interest on special trade credits or loans. The 10% rate applies to interest paid to banks or insurance companies. The 15% rate applies to other interest.
- (v) This rate applies if the shareholding of the recipient is at least 50%. The rate is 10% if the shareholding of the recipient is at least 25% but less than 50%. The rate is 15% for other dividends.
- (w) The China treaty does not cover Hong Kong.
- (x) Because offshore companies on the island of Madeira enjoy a privileged tax treatment, the Swiss tax authorities may not consider these companies to be residents of Portugal under the treaty between Switzerland and Portugal. However, the Switzerland-EU agreement covers Madeira (see Section E and the paragraph preceding the treaty withholding tax rate table).
- (y) This rate applies if the shareholding of the recipient is at least 10%. For other dividends, the rate is 15%.
- (z) The rate is 10% if the shareholding of the recipient is less than 25%.
- (aa) The 0% rate applies to interest on certain government bonds. The 5% rate applies to other interest.
- (bb) This rate applies if the shareholding of the recipient is at least 10%. However a 0% rate may apply in certain circumstances.
- (cc) A 0% rate applies to interest on bank loans and in certain other special cases.
- (dd) The 5% rate applies if the shareholding by a corporation is at least 20%. The treaty withholding tax rate is increased to 15% if the shareholding is less than 20%.
- (ee) The 15% rate applies to dividends paid to corporations holding participations of at least 33<sup>1</sup>/<sub>3</sub>% in other enterprises.
- (ff) If the participation is quoted on the Japanese stock exchange and if the shareholding is less than 5%, the tax rate is 7% for the period of 1 January 2004 through 31 March 2008 and 15% beginning on 1 April 2008.
- (gg) A 0% rate may apply under the Switzerland-EU agreement (see the paragraph preceding the treaty withholding tax rate table). The 0% rate also applies to Bulgaria and Romania, which became members of the EU on 1 January 2007. The rates shown in the table are the treaty withholding tax rates.
- (hh) The 0% rate applies to corporate recipients if the direct shareholding is at least 25% and if the participation has been held for at least two years. The treaty withholding tax rate is increased to 15% if the shareholding is less than 25% or if the participation has been held for less than two years.
- (ii) Switzerland and the United Kingdom have renegotiated their double tax treaty, but the date of entry into force of the new treaty has not yet been determined. The renegotiated treaty includes several changes. For example, a 0% rate will apply to dividends paid to corporate recipients if the shareholding is at least 10%.
- (jj) The 5% rate applies if the corporate recipient of the dividends holds a shareholding of at least 20% in the distributing entity and has invested at least US\$200,000 in the country of the distributing entity. The treaty withholding tax rate is increased to 15% if the shareholding is less than 20%.
- (kk) The 0% rate applies to interest paid to certain government agencies or in connection with the purchase of industrial, commercial or scientific equipment



on credit. The 5% rate applies to interest paid to banks or in connection with the purchase of goods on credit. The 10% rate applies to other interest.

- (II) Under the new protocol to the treaty, Argentina may levy a nonrecoverable withholding tax ranging between 3% to 15%, depending on the underlying intellectual property rights. The protocol awaits ratification in both countries.

The double tax treaties with the following countries are currently being negotiated or renegotiated or are in the final approval procedure: Algeria; Armenia; Colombia; Indonesia; the Netherlands; Pakistan; South Africa; and the United Kingdom.

Switzerland has not entered into double tax treaties with Cyprus and Malta. However, because these countries are members of the EU, a 0% rate may apply under the Switzerland-EU agreement (see the paragraph preceding the treaty withholding tax rate table and Section E).

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### **A. At a Glance**

Corporate Income Tax Rate (%)	28 (a)(b)
Capital Gain Tax Rate (%)	28 (a)(b)
Branch Tax Rate (%)	– (c)
Withholding Tax (%)	
Dividends	0 (d)
Movable Capital Tax	7.5 (b)(e)
Nonresident Withholding Tax	– (f)
Withholding Tax on Syrian Entities and Individuals	– (g)
Wages and Salaries Tax	20 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The standard corporate income tax rates range from 10% to 28%, with the first SYP 50,000 of taxable income being exempt. Certain companies are taxed at flat rates. For details, see Section B.
- (b) A municipality surcharge tax ranging from 4% to 10% of the tax due is imposed in addition to the normal tax rate.
- (c) In general, branches of foreign companies are subject to the nonresident withholding tax. However, if a branch imports goods produced by its parent company and sells the goods on behalf of the company in Syria, it is subject to the normal corporate income tax rates.
- (d) Withholding tax is not imposed on dividends paid by Syrian companies if the profits out of which the dividends are paid have already been subject to tax.
- (e) The tax on movable capital is a withholding tax that is imposed on certain payments to resident and nonresident companies and individuals, including various types of interest payments. For details, see Section B.
- (f) This tax is withheld from specified payments made to nonresident companies, regardless of whether the company has a branch in Syria. The payments subject to the tax include payments under turnkey contracts. For further details, see Section B.
- (g) Withholding tax is imposed on income derived by Syrian individuals or entities from certain contracting, construction work and services and supply work (for details, see Section B).
- (h) Resident employers other than branches of foreign companies withhold wages and salaries tax from salaries, wages and fringe benefits or other remuneration paid to resident and nonresident Syrian employees. The first SYP 5,000 of annual income is exempt.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to corporate income tax on income derived in Syria from the exercise of industrial, commercial and noncommercial activities. However, rental income from real property is not subject to corporate income tax (see Section D).

**Corporate Income Tax Rates.** The standard corporate income tax rates are shown in the following table.

Taxable Profits		Rate (%)
Exceeding (SYP)	Not Exceeding (SYP)	
0	50,000	0
50,000	200,000	10
200,000	500,000	15
500,000	1,000,000	20
1,000,000	3,000,000	24
3,000,000	—	28

An additional municipality surcharge tax of 4% to 10% is levied on the tax due.

Private joint stock and limited liability companies whose headquarters are located in Syria are subject to corporate income tax at a flat rate of 22%. An additional municipality surcharge tax of 4% to 10% is levied on the tax due.

Joint stock companies that issue more than 50% of their shares in its initial public offering are subject to corporate income tax at a flat rate of 14%, inclusive of the municipality surcharge tax.

Private banks, which must be formed as joint stock companies, are subject to tax at a flat rate of 25%, inclusive of the municipality surcharge tax.

Private insurance companies, which must be formed as joint stock companies, are subject to tax at a flat rate of 25%, exclusive of the municipality surcharge tax. If these companies issue more than

50% of their shares in its initial public offering, they are subject to corporate income tax at a flat rate of 15%.

Foreign exchange broker companies are subject to tax at a flat rate of 25%, inclusive of the municipality surcharge tax.

The public economic sector department, Syrian Petroleum Company and Syrian Gas Company are subject to tax at a flat rate of 28%.

**Tax Incentives.** The following tax reductions are available:

- Industrial projects in underdeveloped areas: 2%.
- Industrial companies: 1% if employing 25 or more workers registered with social security, 2% if employing 75 or more of such workers and 3% if employing 150 or more of such workers.
- Projects established in industrial cities: 1%.

Decree No. 186 of 1985 exempts tourist projects from income tax for the first seven years of the project's operations. However, measures in Decree No. 186 of 1985 that provided lifetime exemption for 50% of income of hospitality projects were abolished by Legislative Decree No. 51 of 2006.

**Capital Gains.** Capital gains are included in taxable income and taxed at the applicable corporate income tax rates. Capital gains on securities sold by shareholders are not taxable. Capital losses may not offset ordinary income, and ordinary losses may not offset capital gains.

**Administration.** The fiscal year is normally the calendar year. Companies may obtain the approval of the Minister of Finance to use a different fiscal year.

Taxpayers must use the form prepared by the Ministry of Finance for their tax returns. Joint stock and limited liability companies, public enterprises and large taxpayers must file income tax returns by 31 May. All other taxpayers must file their income tax return by 31 March.

Taxes declared must be paid within 30 days of the submission of the tax return.

A delay penalty of 10% of the assessed tax is imposed if the tax return is not filed by the deadline. The fine may be reduced to 5% if the company files the return within 30 days after the deadline.

All taxpayers must maintain detailed accounting books and records in Arabic and in Syrian pounds. These records must be supported by original supporting documents and maintained in Syria. The records are subject to review in tax audits by the Ministry of Finance.

**Dividends.** Withholding tax is not imposed on dividends paid by Syrian companies if the profits out of which the dividends are paid have already been subject to tax.

Dividends received from foreign sources are subject to the tax on income from movable capital (see *Tax on Income from Movable Capital* below).

**Tax on Income from Movable Capital.** Tax on income from movable capital is withheld at source at a rate of 7.5% on various types of

income paid to resident and nonresident companies and individuals. This tax is imposed on the following types of income:

- Dividends received from non-Syrian companies;
- Interest on bonds and loans issued by Syrian institutions;
- Interests on bonds issued by Syrian or foreign governments;
- Interest on all types of deposits;
- Interest on guarantees and monetary bonds issued by legal entities;
- Interest on liabilities documented with a guarantee, such as a mortgage on real estate or a lien on vehicles; and
- Lottery prizes exceeding SYP 1 million.

A municipality surcharge tax of 4% to 10% is imposed on the tax due.

**Nonresident Withholding Tax.** A nonresident withholding tax is imposed on certain types of income of nonresident companies, regardless of whether they have a branch in Syria. Key aspects of this withholding tax are described below. The rates vary for contracts signed before 1 January 2005 and those signed on or after 1 January 2005.

*Contracts Signed Before 1 January 2005.* For contracts signed before 1 January 2005, if a clear split between value of pure supply and services exists, income tax is imposed at a rate of 10% on the total value of onshore services, and wages and salaries tax is imposed at a rate of 2% of the total value of onshore services. In the absence of a clear split between the value of services and supply, income tax is imposed at a rate of 5% on the total value of the contract, and wages and salaries tax is imposed at a rate of 1% on the total value of the contract.

Offshore services and supply are exempt from the nonresident withholding tax.

*Contracts Signed on or After 1 January 2005.* For contracts signed on or after 1 January 2005, if a clear split exists between value of pure supply and services, income tax is imposed at a rate of 5% on the total value of onshore services. This rate is increased to 7% if the services are provided to oil and gas companies. Wages and salaries tax is imposed at a rate of 2% of the total value of onshore services. However, this rate is increased to 3% if the services are provided to oil and gas companies. In the absence of a clear split between the value of services and supply, income tax is imposed at a rate of 3% on the total value of the contract, and wages and salaries tax is imposed at a rate of 1% on the total value of the contract.

Offshore services and supply are exempt from withholding tax.

The above taxes must be withheld by the payer and remitted to the tax authorities by the 15th day of the month following the month of the contract payment.

*Withholding Tax on Syrian Individuals and Entities.* Withholding tax is imposed on income derived by Syrian individuals or entities from contracting, construction work and services and supply work that is performed with or for the benefit of the Syrian public, joint ventures (involving the private and public sectors), the private and cooperative sectors and foreign companies. The rates of this tax are described below.

Income tax at a rate of 1% is imposed on the total invoice value of purchases of food materials. Such supply is exempt from wages and salaries taxes.

Income tax at a rate of 2% is imposed on the total invoice value of all purchases of materials other than food (for example, computers, machinery and equipment). Such supply is exempt from wages and salaries taxes. Payments for supplies and services by public sector establishments are also exempt from this withholding tax.

Income tax is imposed at a rate of 3% on the total value of construction works (turnkey projects) and on the value of contracts without a clear split between services and supply. Wages and salaries tax is imposed at a rate of 1% on the total value of turnkey projects and on the total value of contracts without a clear split between services and supply. Income tax at a rate of 5% is imposed on the total value of services. However, this rate is increased to 7% if the services are provided to oil and gas companies. Wages and salaries tax is imposed at a rate of 2%. However, this rate is increased to 3% if the services are provided to oil and gas companies.

The above withholding taxes must be withheld by the payer and remitted to the tax authorities by the 15th day of the month following the month of the payment. Both the payer and payee are collectively responsible for the payment of the tax due.

**Foreign Tax Relief.** Syrian law does not provide for foreign tax credits.

### **C. Determination of Trading Income**

**General.** Taxable income is the income reported in the companies' financial statements, subject to certain adjustments.

The following types of income are exempt from tax:

- Profits derived by members of agriculture cooperatives and by the cooperatives themselves, which arrange the sale of members' crops or purchase machinery or equipment for use on members' land;
- 100% of revenue arising from sea and air transportation (this exemption may be granted to non-Syrian legal entities on the condition of reciprocity); and
- 50% of revenue arising from poultry and bovine enterprises.

Kindergartens and institutions for people with special needs are exempt from tax.

The following are major types of nondeductible expenses:

- Capital expenditures that result in an increase in the value of fixed assets; and
- Fees paid to partners as remuneration for their management of the partnership.

The first SYP 50,000 of the annual profit shares of partners in general partnerships and of general partners in limited partnerships is exempt from tax.

**Inventories.** Syrian law does not specify a method of valuing inventories. In practice, the weighted-average method is the most commonly used method.

**Provisions.** The statutory reserve is the only reserve that may be claimed as a tax deduction. Bad debts may be written off, depending on the age of the debt and the solvency of the debtor.

**Tax Depreciation.** The straight-line method may be used to depreciate assets.

The Syrian Income Tax Law does not specify any depreciation rates. The law grants the tax assessor the right to determine whether the rates used are in line with the normal rates applicable for the same industry under the same working conditions. The following rates are normally acceptable.

Asset	Rate (%)
Building and real estate	5
Machinery and equipment	10
Furniture and fixtures	15
Hand tools	20
Vehicles	25

The amortization of intangible assets may not be deducted.

**Relief for Losses.** Losses may be carried forward for five years. Loss carrybacks are not allowed.

**Groups of Companies.** The Syrian law is silent regarding groups of companies. However, if a group operates under a single legal entity, the group should file a consolidated tax return.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Consumption tax on sales of gasoline, kerosene and various luxury goods and services; collected by the seller from the buyer and then paid to the tax department	5 to 20
Supply tax on sugar and rice	5 to 20
Excise taxes	
Hotels	
Boarding and food	5 to 10
Beverages	15
Entertainment (excluding cinema and theatre)	30
Travel tickets (first class)	3
Alcoholic beverages	35
Cars, jewelry, electrical appliances, carpets, watches, alcoholic beverages	15
Certain products manufactured from precious metals	20
Customs duties; essential items and raw materials used in manufacturing are taxable at 1%, while luxury goods are taxable at rates exceeding 100%	1 to over 100
Property tax; imposed on income from real property; the tax base is an estimated rental value, which takes into account the nature of the property's construction, location, size and other factors; a war surtax of 30% of the tax due is also imposed	14 to 60

<b>Nature of Tax</b>	<b>Rate (%)</b>
Other presumptive taxes on real estate	Various
Property registration fee; due on the registration sale, transfer, assignment or inheritance of real estate; the rate is applied to the value of the property, as estimated by the Ministry of Finance	10
Stamp duties; imposed at a fixed rate, which varies according to the type of transaction, or at a proportional rate based on the value stated in the document subject to the duty	Various
Social security contributions; imposed for old age, disability and death; rates applied to basic salary	
Employer	14
Employee	7
Work injury and insurance contribution; paid by employer on basic salary	3.1

## **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** The Syrian currency is the Syrian pound (SYP).

**Transfer Pricing.** Syrian law does not address transfer pricing. However, taxes may be assessed on an imputed basis if the branch account for the foreign company does not show the real profit.

## **F. Tax Treaties**

Syria has entered into double tax treaties with Algeria, Armenia, Bahrain, Belarus, Bulgaria, Cyprus, Egypt, France, India, Indonesia, Italy, Iran, Kuwait, Lebanon, Malta, Pakistan, Poland, Qatar, Romania, the Russian Federation, Tunisia, Turkey, the United Arab Emirates and Ukraine.

Syria has entered into limited tax treaties for sea and/or air transportation with Cyprus, France, Greece, Italy and the Netherlands.

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**A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (a)(b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	
Paid to Residents	0
Paid to Nonresident Corporations	25 (c)
Paid to Nonresident Individuals	30 (c)
Interest	6/10/20 (d)
Royalties from Patents, Know-how, etc.	15/20 (d)
Branch Remittance Tax	0



**Net Operating Losses (Years)**

Carryback	0
Carryforward	5

- Maximum rate. For details, see Section B.
- Effective from 1 January 1990, income taxation of securities transactions is suspended, but a securities transaction tax is imposed (see Section B).
- This rate may be reduced to 20%. For details and for the definition of a non-resident corporation, see Section B.
- The 6% rate applies to payments made in accordance with the Financial Asset Securitization Act or Real Estate Securitization Act. The 20% rate applies to payments to nonresidents.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** A domestic profit-seeking enterprise is subject to corporate income tax on all its income, regardless of source. A foreign profit-seeking enterprise is subject to tax only on its income from Republic of China (ROC) sources. All profit-seeking enterprises, including subsidiaries of foreign companies, incorporated under the Company Law of the ROC are considered domestic profit-seeking enterprises. A branch office or a fixed place of business of a foreign profit-seeking enterprise operating in the ROC is taxed on that portion of income generated in the ROC.

**Tax Rates.** Corporate income tax rates for 2008 are progressive, as indicated in the following table.

<b>Total Net Income</b>		<b>Rate (%)</b>
<b>Exceeding (NT\$)</b>	<b>Not Exceeding (NT\$)</b>	
0	50,000	0
50,000	100,000	15
100,000	—	25

**Alternative Minimum Tax.** The alternative minimum tax (AMT) took effect on 1 January 2006.

AMT applies to all profit-seeking enterprises except for the following:

- Sole proprietorships and partnerships;
- Special tax-exempt entities, such as educational, cultural, public welfare and charitable organizations and government-owned enterprises;
- Entities incapable of paying tax, such as profit-seeking enterprises that are in liquidation or bankruptcy;
- Entities that do not use tax-reduction or tax incentives or that do not have tax-exempt income;
- Foreign profit-seeking enterprises that do not have a fixed place of business or business agent in Taiwan; and
- Profit-seeking enterprises with base income (see below) under NT\$2,000,000.

AMT is calculated in accordance with the following formula:

$$\text{AMT} = (\text{base income} - \text{deduction of NT\$2 million}) \times 10\%$$

Base income equals the sum of the following items:

- Taxable income;
- Tax-exempt income under the Statute for Upgrading Industries and other credit regulations;
- Income from transactions in securities and futures; and
- Tax-exempt income of offshore banking units.

If the amount of regular income tax equals or exceeds the amount of AMT, only the regular income tax is payable. The amount of regular income tax equals tax payable calculated under the Income Tax Law, less tax credits.

If the amount of regular income tax is less than the amount of AMT, the difference between regular income tax and AMT is payable in addition to the regular income tax. The additional tax payment cannot be offset by tax credits.

**Capital Gains.** Effective from 1 January 1990, income taxation of securities transactions is suspended, but a securities transaction tax of 0.3% or 0.1% is imposed. During the period of 30 January 2002 through 31 December 2009, trading in corporate bonds and financial bonds (as defined in the Banking Law of the ROC) is exempt from securities transaction tax. The suspension of securities transaction income tax applies only to securities issued and certified in accordance with the law of the ROC. As a result, gains on disposals of securities remain subject to income tax at the corporate tax rate of 25% if the securities are not issued and certified pursuant to the law of the ROC. No preferential rate is available.

Gains on sales of land are exempt from income tax, but are subject to land value increment tax (see Section D).

**Administration.** The tax year is normally the calendar year. Permission must be obtained to use any other period. An annual tax return must be filed during the fifth month of the year following the tax year. An extension to file a tax return is no longer available.

Payment of tax after the original due date or payment of additional assessed tax is subject to interest, computed from the date immediately following the original due date to the date of payment, at the prevailing interest rate provided by the Directorate General of Postal Remittances and Savings Bank (PRSB). In general, the late filing penalty is the greater of 10% of tax due or NT\$1,500, and the nonfiling penalty is 20% of the tax assessed by the authorities, but not less than NT\$4,500. Underreporting of taxable income is subject to a penalty of up to two times the underpayment of tax. A penalty of up to three times the tax payable may be imposed for the failure to file a tax return.

During the month of September, a profit-seeking enterprise must pay an interim tax equal to 50% of the preceding year's tax liability. Under the Income Tax Law, qualified enterprises may pay interim tax based on the income derived in the first six months of the current year. If the interim tax payment is made after 30 September but before 31 October, late payment interest accrues on a daily basis at the prevailing interest rate provided by the PRSB. If the interim payment is not made by 31 October, the tax authorities assess one month's interest at the prevailing interest rate provided by the PRSB.

**Dividends.** The dividend withholding tax rate is 25% for nonresident corporations and 30% for nonresident individuals. The rates for nonresidents are reduced to 20% if the investments are approved by the ROC government pursuant to the Statute for Investment by Foreign Nationals or the Statute for Investment by Overseas Chinese. Withholding tax is not imposed on dividends paid to residents or on remittances of after-tax profits by a branch to its foreign home office.

Under an imputation system, which took effect on 1 January 1998, a 10% surtax is imposed on the undistributed profits of companies in the second year following the year in which the profits are earned. This tax is in addition to the normal corporate income tax imposed on the profits (see *Tax Rates* above). Resident individuals who receive dividends from resident companies include the dividends in their taxable income and are granted tax credits for the corporate income tax and the 10% surtax paid by the distributing company in the ROC. For nonresident individuals and corporations, the tax credit is limited to 10% of the franked dividends (dividends paid out of company profits on which the 10% surtax has been imposed) that were subject to the 10% surtax at the corporate level. Cash refunds for excess credits are granted to shareholders who are resident individuals.

Companies are required to maintain an imputation credit account and calculate the imputation credits that are allocated to shareholders. These accounts are designed to limit credits to the amount of corporate income tax and surtax paid in the ROC. The total tax credits available are determined by multiplying the dividends received by the ratio of total tax paid at the corporate level to accumulated retained earnings since 1998.

Dividends and imputation tax credits received by companies from resident companies are exempt from corporate income tax. However, imputation credits may not be used by companies and must be passed on to shareholders who are individuals. The tax credits are passed through to the company's individual shareholders by adding the tax credits received to the numerator of the ratio described in the preceding paragraph.

**Foreign Tax Relief.** A tax credit is allowed for foreign income tax paid directly by a domestic profit-seeking enterprise, but it may not exceed the additional amount of the ROC tax resulting from the inclusion of the foreign-source portion in the profit-seeking enterprise's total income.

### C. Determination of Trading Income

**General.** Income for tax purposes is computed according to generally accepted accounting principles, adjusted for certain provisions included in the tax code.

Necessary and ordinary expenses of a profit-seeking enterprise are deductible, provided these are adequately supported by documentation. The guidelines of Examination of Income Tax of Profit-Seeking Enterprises, promulgated by the Ministry of Finance, provide guidelines for determining deductible business expenses. Transactions must conform to regular business practice; otherwise, tax authorities may assess tax based on industry statistics.

**Tax Exemptions.** A foreign enterprise engaging in international transportation that derives income in the ROC is exempt from tax if Taiwan and the home country of the foreign enterprise have entered into an international transportation income tax agreement, which provides reciprocal treatment to ROC international transportation enterprises operating in the foreign country. See Section F for a list of the countries with which Taiwan has entered into such agreements.

On approval from the competent authority, royalties paid to a foreign enterprise for the use of its patent rights or trademarks, or for the licensing of other special rights, may be exempt from tax if the rights are acquired to introduce new production technology or products, improve product quality or reduce production cost. In addition, amounts paid to a foreign enterprise for technical services rendered in the construction of a factory for an important productive enterprise approved by the competent authority may also be exempt from tax.

Interest received by a foreign financial institution for offering financing facilities to their ROC branch offices or other financial institutions in the ROC is exempt from tax. With the approval of the Ministry of Finance, interest received by a foreign financial institution for extending loans to legal entities in the ROC for financing important economic construction projects is also exempt from tax.

**Inventories.** Inventories are valued for tax purposes at either cost or the lower of cost or market value. In determining the cost of goods sold, specific identification, first-in, first-out (FIFO), last-in, first-out (LIFO), weighted average, moving average, average or any other method prescribed by competent authority may be used. However, the use of two different cost methods in one fiscal year is not allowed. In addition, if the LIFO method is adopted, valuation by lower of cost or market value must not be applied.

**Provisions.** Provisions for a retirement fund approved by the authorities are deductible in amounts of up to 15% of total payroll. The applicable percentage depends on whether the fund is managed separately from the business entity and whether it conforms to the provisions of the Labor Standards Law.

Allowance for bad debts is limited to 1% of the balance of outstanding trade accounts and notes receivable (secured or unsecured) at year-end.

Companies that obtain approval from competent authorities for their outbound investments may set up provisions for losses on outbound foreign investments, equal to 20% of the gross amount invested.

**Tax Depreciation, Depletion and Amortization.** A taxpayer may claim a depreciation deduction for most property (except land) used in a trade or business. Depreciation may be computed using the straight-line, declining-balance or working-hour method. Under the working-hour method, depreciation is computed based on the number of working hours that a depreciable asset is used in a tax year. The time periods over which an asset may be depreciated are specified by the tax authorities. The following are some of the applicable time periods.

Asset	Years
Commercial buildings	10 to 50
Industrial buildings	8 to 35
Office equipment	3 to 5
Motor vehicles	4 to 5
Plant and machinery	2 to 20

Companies may use an accelerated depreciation method if they meet certain criteria. If a taxpayer does not apply to the tax authorities for a particular method of depreciation, the tax authorities deem the taxpayer to have chosen the straight-line method.

Depletion of assets in the form of nonreplaceable resources is computed either annually or per unit. This method must be applied consistently from year to year. In addition, a taxpayer may claim an amortization deduction for intangibles and organization expenses. Licenses and copyrights are amortized over 10 and 15 years, respectively. Trademarks, patents and franchises must be amortized over the period prescribed by the respective laws governing the granting of these rights. Organizational and preoperating expenses must be amortized over five years or more starting from the first year of operation, except when the total life of the business is less than five years.

**Tax Credits.** Business enterprises may claim tax credits equal to 5% to 20% of amounts invested in equipment or technology used for the following: automation; reclamation of resources or pollution control; employment of new and clean energy; energy saving; recycling of water for industrial use; reduction of greenhouse gas emission; enhancement of energy efficiency; or promotion of an enterprise's digital efficiency. Companies that invest in less-developed areas or in areas deficient in resources qualify for a credit equal to 20% of the amounts invested if they invest specified amounts or if they employ a specified number of employees.

Business enterprises or individuals who subscribe to and hold for three years or longer shares issued by a company within emerging, important and strategic industries may credit the amount paid for such shares against income tax payable. Business enterprises may credit up to 20% of the price paid for the stock against its income tax. Individuals may credit up to 10% of the price paid for the shares against the income tax payable, but the amount of the credit in each year, except for the last year of the carryforward period, is limited to 50% of the income tax payable in the relevant year. The tax credit rate for individuals is reduced by one percentage point every two years beginning in January 2000. The current rate is 6%.

Investment credits not fully used in the current year may be carried forward for four years.

**Relief for Losses.** If certain requirements are met, companies may carry forward approved losses for five years. Carrybacks are not permitted.

**Groups of Companies.** In general, associated or related companies in a group are taxed separately for corporate income tax purposes and may not file consolidated tax returns. However, a financial holding company that holds 90% or more of the shares of subsidiaries in the ROC for twelve months or more may elect to file a consolidated profit-seeking enterprise income tax return under its own name.

In addition, a company that acquires 90% or more of the shares or capital of its subsidiaries through a merger, spin-off or other acquisition under the Business Merger and Acquisition Law and

holds such shares for twelve months or more may elect to file a consolidated profit-seeking enterprise income tax return under its own name.

A 10% surtax on the undistributed consolidated retained earnings applies in addition to the corporate income tax on consolidated net income.

An election to file a consolidated profit-seeking enterprise return applies only to corporate income tax and, as a result, qualifying parent companies and their subsidiaries must calculate all other taxes separately.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Business tax or value-added tax (VAT), on sales and services; general rate	5
Tax on gross business receipts of specified businesses that are not subject to the general VAT rate	0 to 25
Land value increment tax, on unearned increase in the value of land, payable by the seller at the time of ownership transfer	20 to 40
Registration fee, on original or additional capital contributions	0.025
Government labor insurance scheme, on monthly salary up to NT\$43,900; paid by Employer	4.55
Employee	1.3
Occupational injury insurance; payable by employer on salaries	0.07 to 3
National health insurance plan, on monthly salary up to NT\$131,700; paid by Employer	4.641
Employee	1.365

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** Under foreign-exchange control regulations, registered business entities or adults legally residing in Taiwan may remit out (in) unlimited funds for the import (export) of goods and services. However, prior declaration to the Central Bank of China (Taiwan) is required for the following:

- An individual who has accumulated inward or outward remittances exceeding US\$5 million in a year;
- A business entity with accumulated inward or outward remittances exceeding US\$50 million in a year;
- A single remittance by an individual exceeding US\$500,000; and
- A single remittance by a business entity exceeding US\$1 million.

In addition, supporting documents, such as transaction contracts, must be submitted at the time of remittance for the Central Bank's audit purposes.

If an investor intends to repatriate invested capital or profits overseas without being subject to exchange control limits, the approval

of the outward investment by the Ministry of Economic Affairs is required.

**Debt-to-Equity Rules.** The ROC Company Law does not impose any debt-to-equity ratio restrictions. The Ministry of Economic Affairs prescribes minimum capital for different types of companies and by industry.

**Controlled Foreign Companies.** Income derived by foreign subsidiaries of ROC companies is not subject to ROC income tax until it is repatriated to the ROC in the form of dividends.

**Antiavoidance Legislation.** The ROC Income Tax Law does not contain specific regulations to prevent the diversion of income and capital gains, provided the underlying transactions are carried out according to regular business practice. However, the general rule is that the tax authorities may ignore transactions that constitute an abuse of legal forms provided by the Civil Code. The same applies to sham transactions or transactions made to conceal the actual facts. Such transactions are not taken into account when taxes are calculated.

**Transfer Pricing.** The Taiwan Transfer Pricing Examination Guidelines (the TP Guidelines) took effect on 30 December 2004. Except for immaterial amounts from related-party transactions, extensive contemporaneous documentation is required. Under the TP Guidelines, on filing the annual income tax return, a profit-seeking enterprise must have the transfer-pricing report and relevant documents prepared and ready for audit, if requested. In addition, in the event of a tax audit, a profit-seeking enterprise must provide the tax authorities with all required documents within one month of a request for such documents. The TP Guidelines provide that the tax authorities may impose a maximum penalty of 200% of the tax shortfall resulting from improper transfer prices.

## F. Treaty Withholding Tax Rates

The ROC has entered into double tax treaties with the countries listed in the table below. In addition, the ROC has signed double tax treaties with Paraguay, the Philippines, Switzerland and Thailand, which are currently awaiting ratification by the respective governments.

The ROC has entered into international transportation income tax agreements with Canada, the European Union, Germany, Israel, Japan, Korea, Luxembourg, Macau, the Netherlands, Norway, Sweden, Thailand and the United States.

The table below lists the withholding tax rates under the ROC's double tax treaties. The rates apply only if the recipient is the beneficial owner of the income.

	Dividends %	Interest %	Royalties %
Australia	10/15 (a)	10	12.5
Belgium	10	10	10
Denmark	10	10	10
Gambia	10	10	10
Indonesia	10	10	10
Macedonia	10	10	10
Malaysia	12.5	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Netherlands	10	10	10
New Zealand	15	10	10
Senegal	10	15	12.5
Singapore	– (b)	– (e)	15
South Africa	5/15 (c)	10	10
Swaziland	10	10	10
Sweden	10	10	10
United Kingdom	10	10	10
Vietnam	15	10	15
Nontreaty countries	20/25/30 (d)	20	20

- (a) The 10% rate applies to dividends paid to a company (other than a partnership) holding directly at least 25% of the capital of the payer. The 15% rate applies to other dividends.
- (b) For dividends paid to Singapore residents, the withholding tax on the dividends and the corporate income tax payable on the profits of the payer may not exceed 40% of the taxable income of the payer out of which the dividends are paid.
- (c) The 5% rate applies if the beneficial owner of the dividends holds directly at least 10% of the capital of the payer. The 15% rate applies to other dividends.
- (d) The 25% rate applies to dividends paid to nonresident corporations and the 30% rate applies to dividends paid to nonresident individuals. A reduced 20% rate applies in certain circumstances (see Section B).
- (e) The Singapore treaty does not provide a withholding tax applicable to interest.

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**A. At a Glance**

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	5/10/20 (b)
Interest	10 (c)
Royalties	15 (d)
Management and Professional Fees (Services Fees)	5/15 (e)
Insurance Premiums	5 (f)
Rent, Premiums and Similar Consideration	10/15 (g)
Natural Resources Payments	15 (d)
Branch Remittance Tax	10 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) Capital gains are treated as business income for companies and are taxed at the regular corporate income tax rate.
- (b) The 10% rate is the general rate for residents, and the 20% rate is the general rate for nonresidents. The rate is 5% for dividends paid by companies listed on the Dar es Salaam Stock Exchange. Dividends are exempt if a resident recipient company owns at least 25% of the voting capital of the payer of the dividends. The dividend withholding tax is a final tax.
- (c) This tax applies to residents and nonresidents. It is a final tax for resident individuals and nonresidents. Resident companies may credit the withholding tax against their annual corporate income tax.
- (d) This withholding tax applies to both residents and nonresidents. It is a final tax for nonresidents only.
- (e) The 5% rate applies to residents, and the 15% rate applies to nonresidents. The withholding tax on management and professional fees (services fees) is a final tax.
- (f) This tax applies to nonresidents only.
- (g) The 10% rate applies to residents. The 15% rate applies to nonresidents. This withholding tax is a final tax for nonresidents and for individuals not engaged in business.
- (h) This tax applies to the after-tax profits of branches of foreign companies.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies are considered resident for tax purposes if either of the following applies:

- They are incorporated, established or registered in Tanzania; or
- Management and control of the affairs of the company are exercised in Tanzania during any part of the tax year.

Resident companies are subject to tax on their worldwide income. Nonresident companies are subject to tax on their Tanzanian-source income only.

**Rates of Corporate Tax.** Both resident and nonresident companies are subject to tax at a rate of 30%.

**Tax Incentives.** Companies holding certificates of incentives under the Tanzania Investment Act, 1997 benefit from the following:

- Deferral of payment of value-added tax until the beginning of production of goods and services; and
- Exemption from customs duty on capital goods.

**Capital Gains.** Capital gains are treated as business income for companies and are taxed at the regular corporate income tax rate.

**Administration.** A company's tax year is the calendar year. Companies may apply to the Commissioner for Domestic Revenue for approval of a different tax year.

Companies must file provisional tax returns by the end of the third month of their tax year and file their final tax returns within six months after the end of the tax year. The estimated tax must be paid in four equal installments, as set forth in the provisional return. The remaining balance of tax due must be paid with the final return. The taxpayer's estimate of taxable income may not be less than its taxable income as finally determined for the preceding tax year. The Commissioner for Domestic Revenue may allow a lower estimate if justified by the facts and circumstances of the case. Companies may revise their provisional return if new developments suggest an increase or decrease in income.

A penalty based on the Bank of Tanzania discounting rate established at the beginning of the year compounded monthly is imposed for a failure to file a return. Fraud related to a return may be subject to a penalty of up to 100% of the underpaid tax.

Interest is charged for unpaid and underestimated taxes. An interest charge based on the Bank of Tanzania discounting rate established at the beginning of the year is immediately imposed on tax unpaid after the due date, and it is compounded monthly. If the amount of tax payable is underestimated, interest is charged at the Bank of Tanzania discounting rate compounded monthly on the difference between the tax assessed and the estimated tax.

**Dividends.** A final withholding tax is imposed on dividends. A 10% rate generally applies to residents and nonresidents. A 5% rate applies to dividends paid by companies listed on the Dar es Salaam Stock Exchange. Dividends are exempt if a resident recipient company owns at least 25% of the voting capital of the payer of the dividends.

Dividends are generally taxable in the year payable. However, if the payment date is determined at an annual general meeting to be in a year other than the year in which the meeting is held, the dividend is taxed in the year of receipt.

### **C. Determination of Trading Income**

**General.** The starting point for computing taxable income is financial statement income. Expenses and losses are generally not deductible unless they are incurred wholly and exclusively in the production of income.

**Inventories.** Inventories are valued at the lower of cost or net realizable value. The last-in, first-out (LIFO) method is not allowed.

**Provisions.** Provisions for losses are allowed only for losses that are specifically identified.

**Depreciation.** Depreciation computed for financial statement purposes is not deductible, but capital allowances are provided for depreciable assets, which are allocated to one of the eight classes. The following are the classes and the rates of the capital allowances.

<b>Class</b>	<b>Assets</b>	<b>Rate</b>
1	Computers and data handling equipment, together with peripheral devices; automobiles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tons; and construction and earth-moving equipment.	37.5%
2	Buses with a seating capacity of 30 or more passengers; heavy general purpose or specialized trucks, trailers and trailer-mounted containers; railroad cars, locomotives and equipment; vessels, barges, tugs and similar water transportation equipment; aircraft; other self-propelling vehicles; plant and machinery, including windmills, electric generators and distribution equipment used in agriculture, manufacturing or mining operations; specialized public utility plant, equipment; and machinery; and other irrigation installations and equipment	25%
3	Office furniture, fixtures and equipment; and any assets not included in another class	12.5%
4	Natural resources exploration and production rights; and assets referred to in Subparagraph 3 in the Third Schedule to the 2004 Income Tax Act and related to natural resource prospecting, exploration and development	20%
5	Buildings, structures, dams, water reservoirs, fences and similar works of a permanent nature used in agriculture, livestock farming or fish farming	20%
6	Buildings, structures, and similar works of a permanent nature other than those in Class 5	5%
7	Intangible assets other than those in Class 4	<sup>1</sup> /useful life
8	Plant and machinery, including windmills, electric generators and distribution equipment used in agriculture	100%

Depreciation of assets in Classes 1, 2 and 3 are computed using the declining-balance method. Depreciation of assets in Classes 4, 5, 6, 7 and 8 are depreciated using the straight-line method.

Assets in Classes 2, 3 and 5 qualify for an initial capital expenditure allowance of 50% for the first year.

The maximum depreciable amount for a noncommercial automobile is TSHS 15 million.

Mining enterprises may deduct 100% of qualifying expenditure in the year of expenditure.

**Relief for Losses.** Companies may carry forward tax losses indefinitely. In general, no carryback is allowed. However a carryback may be allowed for companies performing construction work.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT)	20
Customs duties (imports may also be subject to VAT)	0/5/10/20/25
Property tax; imposed by local governments on the value of real property	0.15
Skills and Development Levy; imposed on gross payroll	6
National Social Security Fund; imposed on basic salary; paid by	
Employer	10
Employee	10

#### E. Foreign-Exchange Controls

Tanzania does not impose foreign-exchange controls on current-account transactions. Bank of Tanzania approval is required for capital-account transactions.

#### F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Canada	10	15	20
Denmark	10	12.5	20
Finland	10	15	20
India	10	12.5	20
Italy	10	12.5	15
Norway	10	15	20
Sweden	10	15	20
Zambia	0	0	0
Nontreaty countries	20	15	20

On 22 September 2005, Tanzania signed a tax treaty with South Africa.

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## THAILAND

(Country Code 66)

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	10
Interest	15 (b)
Royalties from Patents, Know-how, etc.	15
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) Reduced rates apply in certain circumstances (see Section B).

(b) Certain types of interest are exempt from tax [see footnote (a) to Section F].

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Thai resident companies are subject to corporate income tax on their worldwide income. Thai resident companies are those incorporated in Thailand. Branches of foreign corporations are subject to Thai tax on Thailand-source income only.

**Rates of Corporate Tax.** Thai resident companies and branches of foreign corporations are subject to corporate income tax at a flat rate of 30% on taxable profits.

Reduced rates of corporate income tax apply in certain circumstances. The following are the reduced rates:

- 20% for a specified period for companies newly listed on the Market for Alternative Investment;
- 25% for a specified period for companies newly listed on the Stock Exchange of Thailand;
- 25% for a specified period on the first Baht 300 million of annual profit for companies listed on the Stock Exchange of Thailand; and
- Progressive rates of 15% to 30% for locally incorporated companies with paid-up capital of not more than Baht 5 million.

**Capital Gains.** Capital gains are treated as ordinary business income subject to income tax.

**Administration.** Corporate income tax returns, together with the audited financial statements, must be filed with the Revenue Department within 150 days after the accounting year-end. Corporate income tax payments are due on the filing date.

Mid-year (interim) tax returns must be filed with interim tax payments within two months after the end of the first half of the accounting year. Listed companies, financial institutions and companies approved by the Director-General of the Revenue Department compute their interim tax based on actual operating results for the first half-year. Other companies compute their interim tax based on one-half of the estimated annual profit. These companies do not have to submit audited or reviewed financial statements. The interim tax is creditable against the annual tax payable at the end of the year.

### Dividends

*Received from Resident Companies.* In general, one-half of dividends received by resident companies from other resident companies may be excluded from taxable income. However, the full amount of the dividends may be excluded if either of the following applies:

- The recipient is a company listed on the Stock Exchange of Thailand; or
- The recipient owns at least a 25% equity interest in the distributing company, provided that the distributing company does not own a direct or indirect equity interest in the recipient company.

These rules apply if the related shares are acquired not less than three months before receiving the dividends and are not disposed of within three months after receiving the dividends.

*Received from Foreign Companies.* A Thai company that owns an equity interest of at least 25% in a foreign company can exclude dividends received from such foreign company from its taxable profit if, on the date of receipt of the dividend, it has held the investment for at least six months and if the profit out of which the dividends are distributed is subject to income tax in the hands of the foreign company at a rate of at least 15%.

**Foreign Tax Relief.** Thailand has entered into double tax treaties with 52 countries. In general, under the treaties, foreign tax relief is limited to the lower of the foreign tax and the amount of Thai tax calculated on such income.

Foreign tax payable in nontreaty countries may be credited against Thai tax, limited to the Thai tax computed on the foreign income,

provided the foreign tax meets the conditions set forth in the relevant measure. If the foreign tax is not used as a credit, it may be claimed as a deduction for income tax purposes.

### C. Determination of Trading Income

**General.** Corporate income tax is based on audited financial statements, subject to certain adjustments.

In general, expenses are tax-deductible if they are incurred wholly and exclusively for the purpose of generating income. However, expenses created by means of provisions or allowances, such as those for bad debts or stock obsolescence, are not tax-deductible until they are actually used.

**Inventories.** Inventories must be valued at the lower of cost or market value. Cost may be determined using any generally accepted accounting method. After a method is adopted, a change to another method may be made only with approval of the Director-General of the Revenue Department.

**Depreciation and Amortization Allowance.** A company may depreciate its fixed assets under any generally accepted accounting method, provided the number of years of depreciation under the selected method is not less than the minimum prescribed period. However, after a method is adopted, it may not be changed unless prior consent has been obtained from the Director-General of the Revenue Department. The following are the minimum prescribed periods applicable to some major fixed assets.

Asset	Time Period
Buildings	20 years
Furniture, fixtures, machinery, equipment and motor vehicles	5 years
Trademarks, goodwill, licenses, patents and copyrights (including software)	Over period of use (or 10 years if no period of use)
Computer hardware	3 years

**Relief for Losses.** Operating losses may be carried forward for a period of five years. Loss carrybacks are not allowed.

**Groups of Companies.** The Thai tax law does not include any provisions for consolidated treatment under which companies within a group may be treated as one tax entity. Each individual company must file its income tax return and pay its tax.

### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on goods sold, services rendered and imports	7
Specific business tax, on financial service and real estate businesses	Various

### E. Miscellaneous Matters

**Foreign-Exchange Controls.** On presentation of supporting documents, virtually all foreign-exchange transactions may be processed by a commercial bank. However, for certain foreign-

currency inflows converted to local currency, such as investments in debt securities and foreign-currency loans, 30% of funds remitted into Thailand need to be held as a reserve for at least one year. Exemptions are granted if the loans or debts issuances are fully hedged through straight- or cross-currency swaps.

**Transfer Pricing.** Under transfer-pricing guidelines issued by the Thai Revenue Department, all sales or service transactions must be executed at an arm's length price, and the taxpayer is required to prepare and maintain contemporaneous documentation to substantiate the price. Acceptable transfer-pricing methods include the comparable uncontrolled price method, the resale price method, the cost-plus method and other internationally accepted methods. If the taxpayer fails to prove that a transaction challenged by the tax authorities was executed on an arm's length basis, additional tax can be assessed. Transactions between related parties are subject to particular scrutiny.

## F. Treaty Withholding Tax Rates

The rates in the table reflect the lower of the treaty rate and the rate under domestic tax law.

	Dividends %	Interest (a)(b) %	Royalties %
Armenia	10	15 (c)	15
Australia	10	15 (c)	15
Austria	10	15 (c)	15
Bahrain	10	15 (c)	15
Bangladesh	10	15 (c)	15
Belgium	10	15 (c)	15 (f)
Bulgaria	10	15 (c)(e)	15 (f)
Canada	10	15 (c)	15 (f)
China	10	15 (c)	15
Cyprus	10	15 (c)(e)(q)	15 (r)
Czech Republic	10	15 (c)	15 (f)(g)
Denmark	10	15 (o)	15 (f)
Finland	10	15 (c)	15
France	10	15 (c)(d)	15 (f)(h)
Germany	10	15 (c)(e)	15 (f)
Hong Kong	10	15 (c)(m)	15 (f)(g)
Hungary	10	15 (c)	15
India	10	15 (c)	15
Indonesia	10	15 (c)	15
Israel	10	15 (c)	15 (f)
Italy	10	15 (c)(e)	15 (f)
Japan	10	15 (c)	15
Korea	10	15 (c)	15
Kuwait	10	15 (c)(e)(o)	15
Laos	10	15 (c)(e)	15
Luxembourg	10	15 (c)	15
Malaysia	10	15 (c)	15
Mauritius	10	15 (c)	15 (f)
Nepal	10	15 (c)	15
Netherlands	10	15	15 (f)
New Zealand	10	15 (c)(m)	15 (n)
Norway	10	15 (c)(o)	15 (f)(s)
Oman	10	15 (c)(t)	15
Pakistan	10	15 (c)	15 (f)(h)



	<b>Dividends</b>	<b>Interest (a)(b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Philippines	10	15 (c)	15
Poland	10	15 (c)	15 (f)(h)
Romania	10	15 (c)	15
Seychelles	10	15 (c)	15
Singapore	10	15 (c)	15
Slovenia	10	15 (c)(o)	15 (k)
South Africa	10	15 (c)	15
Spain	10	15 (c)	15 (l)
Sri Lanka	10	15 (c)	15
Sweden	10	15 (c)	15
Switzerland	10	15 (i)	15 (f)(g)
Turkey	10	15 (c)	15
Ukraine	10	15 (c)(o)	15
United Arab Emirates	10	15 (c)(e)(o)	15
United Kingdom	10	15 (c)	15 (f)
United States	10	15 (c)(j)	15 (k)
Uzbekistan	10	15 (c)(p)	15
Vietnam	10	15 (c)	15
Nontreaty countries	10	15	15

- (a) The following types of interest are exempt from tax: interest paid to a financial institution wholly owned by another state; interest on certain foreign-currency loans brought into Thailand between 1 May 1979 and 28 February 1990; interest paid by the government or a financial institution established by a specific law of Thailand for the purpose of lending money to promote agriculture, commerce and industry; and interest paid by the central bank or state enterprises on loans approved by the Ministry of Finance.
- (b) The rate is reduced to 10% if the interest is paid to banks, financial institutions or insurance companies of the treaty countries.
- (c) Interest paid to the government, subdivisions of contracting states or a central bank is exempt from tax.
- (d) The withholding rate is 3% for interest on loans or credits granted for at least four years with the participation of a public financing institution to a statutory body or enterprise of the other contracting state, in relation to sales of equipment, or in relation to the survey, installation or supply of industrial, commercial or scientific premises, or public works.
- (e) Interest paid to a financial institution wholly owned by the other contracting state is exempt.
- (f) The withholding rate is 5% (10% for Pakistan) for royalties for copyrights of literary, artistic or scientific works.
- (g) The withholding rate is 10% for royalties paid for patents, trademarks, designs, models, plans, or secret formulas or processes.
- (h) Royalties and similar payments paid to the other contracting state or a state-owned company for films or tapes are exempt.
- (i) Interest paid to residents of Switzerland with respect to loans guaranteed or insured under the Swiss provisions regulating the Export or Investment Risk Guarantee is exempt.
- (j) The rate is reduced to 10% for interest paid on indebtedness resulting from sales on credit of equipment, merchandise or services. Interest on debt obligations guaranteed or insured by the government is exempt.
- (k) The withholding rate is 5% (10% for Slovenia) for royalties for the use of, or the right to use, copyrights of literary, artistic or scientific works, including software and motion pictures and works on films, tape or other means of reproduction for use in connection with radio or television broadcasting. The withholding rate is 8% (10% for Slovenia) for royalties for the use of, or the right to use, industrial, commercial or scientific equipment.
- (l) The withholding rate is 5% for royalties paid for the use of, or the right to use, copyrights of literary, dramatic or scientific works, excluding cinematographic films or films or tapes used for radio or television broadcasting. The withholding rate is 8% for amounts paid under financial leases for the use of, or the right to use, industrial, commercial or scientific equipment.
- (m) The rate is reduced to 10% for interest paid on indebtedness resulting from sales on credit of equipment, merchandise or services, except for sales

- between persons not dealing with each other at arm's length. Under the New Zealand treaty, interest derived by the government of New Zealand or its central bank from the investment of official reserves is exempt from tax.
- (n) The withholding tax rate is 10% for royalties paid for the following: the use of or right to use, copyrights, industrial, scientific or commercial equipment, motion picture films, films or videotapes or other recordings for use in connection with television, and tapes or other recordings used in connection with radio broadcasting; for the reception of, or the right to receive, visual images or sounds transmitted to the public by satellite, cable, optic fiber or similar technology; and for the use of, or right to use, in connection with television or radio broadcasting, visual images or sounds transmitted by cable, optic fiber or similar technology.
  - (o) Interest on loans made, guaranteed or insured by the government, central bank, agency or body wholly owned or controlled by the government is exempt from tax.
  - (p) Interest is exempt from tax if it is paid on loans made, guaranteed or insured by the contracting state or by an authorized body of the state on behalf of the state or if it is paid on other debt claims or credits guaranteed or insured on behalf of the contracting state by an authorized body of the state.
  - (q) The rate is reduced to 10% for interest paid on indebtedness resulting from sales on credit of industrial, commercial, or scientific equipment or from sales on credit of merchandise between enterprises.
  - (r) A withholding tax rate of 5% applies to royalties for the use of, or the right to use, copyrights of literary, dramatic, musical, artistic or scientific works, including software, cinematographic films and films or tapes used for radio or television broadcasting. A withholding tax rate of 10% applies to royalties for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
  - (s) The withholding tax rate is 10% for royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
  - (t) The rate is reduced to 10% if the loan or debt claim generating the interest is guaranteed by the government, central bank, state general reserve fund, local authorities, or a body wholly owned by the government.

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## TRINIDAD AND TOBAGO

(Country Code 1)

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### **A. At a Glance**

Corporate Income Tax Rate (%)	25 (a)
Short-Term Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25 (a)

Withholding Tax (%) (c)	
Dividends	5/10 (d)
Interest	15 (e)
Royalties from Patents, Know-how, etc.	15 (e)
Branch Remittance Tax	5 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The rate for companies engaged in the downstream petrochemical sector and related sectors is 35%. For upstream petroleum operations, the rate exceeds 55%. A business levy and a green fund levy are also imposed. See Section B.
- (b) See Section B.
- (c) These withholding taxes apply to payments to nonresidents only.
- (d) The 5% rate applies to dividends paid to corporations owning 50% or more of the voting power of the distributing company. The 10% rate applies to other dividends.
- (e) Applicable to payments to companies and individuals.
- (f) Applicable to remittances of profits to overseas head office.

## B. Taxes on Corporate Income and Gains

**Corporation Tax.** Resident companies are subject to tax on their worldwide income from all sources. Relief from taxation of foreign-source income may be available under a double tax treaty. Nonresident companies engaged in business in Trinidad and Tobago are subject to tax on income directly or indirectly accruing in or derived from Trinidad and Tobago.

**Rates of Tax.** For the 2008 year of income, the basic rate of corporation tax is 25%.

A business levy at a rate of 0.20% is imposed on the annual gross sales or receipts of companies, including branches of nonresident companies operating in Trinidad and Tobago. This levy is credited against the corporation tax liability. It is the final liability if the corporation tax liability is less than the business levy. Certain companies are exempt from the levy, including the following: companies or statutory corporations exempt from corporation tax under any act; certain government corporations under the jurisdiction of the Public Utilities Commission or exempted by order of the President; and companies subject to tax under the Petroleum Taxes Act. A company is not subject to the levy for the first 36 months following the date of registration of its business.

A green fund levy at a rate of 0.1% is imposed on the gross receipts of companies engaged in business in Trinidad and Tobago.

The corporation tax rate for companies engaged in the downstream petrochemical sector and related sectors is 35%. Companies engaged in upstream petroleum operations are subject to various taxes and imposts, of which the most significant are petroleum profits tax of 50%, unemployment levy of 5% and supplemental petroleum tax at rates based on the weighted average crude oil price. Upstream petroleum companies are also subject to a different system of tax administration.

The long-term insurance business of an assurance company is subject to tax at a rate of 15%.

**Capital Gains.** Capital gains are generally not subject to tax. Depending on the class of asset and the nature of the company's

business activities, however, the profit or loss on depreciable assets disposed of after being held for more than 12 months may require a balancing adjustment (see Section C).

Short-term capital gains are profits on the disposal of assets within 12 months of their acquisition. Although these gains are of a capital nature, they are generally subject to tax. Profits derived from the partial disposal of an asset within 12 months of acquisition are also subject to tax.

**Administration.** The tax year is the calendar year. Tax is calculated on the profits for the accounting period that ends during the tax year. For each quarter, a company is required to pay a green fund levy installment, as well as either a corporation tax or business levy installment, whichever is greater. The quarterly payments must be made by 31 March, 30 June, 30 September and 31 December in each tax year. Quarterly payments of corporation tax are determined based on the taxable income for the preceding accounting period. Business levy and green fund levy installments are based on the actual gross sales or receipts of the company for the relevant quarter. The business levy calculation excludes income that is exempt for corporation tax purposes such as dividends received from Trinidad and Tobago resident companies, but the green fund levy calculation takes into account such income.

If the current year's profits exceed the preceding year's profits, a company must pay by 31 December the sum of the tax liability on the preceding year's taxable profits plus 80% of the increase in tax liability over the preceding year. Annual tax returns must be filed by 30 April in the year following the tax year, and any balance of tax due is payable at that time.

If the balance of tax due is not paid by the 30 April deadline, interest accrues at a rate of 20% on the outstanding amount beginning on 1 May. A grace period to 31 October is granted for the filing of the tax return. If the return is not filed by 31 October, a penalty of TT\$1,000 accrues beginning 1 November for each six-month period or part of such period that the return remains outstanding.

**Dividends.** Dividends received from nonresident companies out of profits not derived from or accruing in Trinidad and Tobago are subject to tax. Dividends received by resident companies from other resident companies are tax-exempt.

Dividends paid to nonresident companies and individuals are generally subject to a withholding tax of 10%. The rate is reduced to 5% if the recipient is a corporation owning 50% or more of the voting power of the distributing company.

**Double Tax Relief.** Bilateral agreements have been entered into between the government of Trinidad and Tobago and the governments of certain other countries to provide relief from double taxation. These agreements assure taxpayers that their trade or investment in the other countries is free from the deterrent of double taxation. Relief from double taxation is achieved by one of the following two methods:

- Exemption or a reduced rate on certain classes of income in one of the two countries concerned.

- Credit if the income is fully or partially taxed in the two countries. The tax in the country where the income arises is allowed as a credit against the tax on the same income in the country where the recipient is resident. The credit is the lower of the Trinidad and Tobago tax or the foreign tax on the same income.

### **C. Determination of Taxable Income**

**General.** The assessment is based on financial statements prepared according to international accounting standards, subject to certain adjustments.

To be deductible, expenses must be incurred wholly and exclusively in the production of income. The deduction for business meals and entertainment expenses is limited to 75% of actual expenses. Deductions for management charges (now more broadly defined) paid to a nonresident company may not exceed 2% of the payer's total expenses, exclusive of such charges and capital allowances.

Donations made under a registered deed of covenant to an approved charity that are actually paid during the year of income are deductible, up to a maximum of 15% of the total income of the company (as defined in the law).

**Inventories.** Inventory may be valued at cost or market value, whichever is lower. A method of stock valuation, once properly adopted, is binding until permission to change is obtained from the Board of Inland Revenue.

**Bad Debts.** Trading debts that have become bad, and are proven to be so to the satisfaction of the Board of Inland Revenue, may be deducted from taxable income. In addition, doubtful debts are deductible to the extent that they have become bad during the year. If these debts are subsequently collected, they are included in taxable income in the year of recovery.

### **Tax Depreciation (Capital Allowances)**

*Depreciation (Wear-and-Tear) Allowances.* Depreciation is calculated on the depreciated value of fixed assets at the beginning of each accounting year.

Industrial buildings qualify for a depreciation allowance of 10% under the declining-balance method. Buildings completed before 1 January 1995 that are used in retail or wholesale trade or as office buildings or rental properties are not entitled to any depreciation allowances, unless they are used exclusively to house plant and machinery and the amounts claimed for the depreciation allowance are reasonable.

Buildings or structures completed on or after 1 January 1995 and capital improvements made to buildings or structures on or after that date qualify for a 10% depreciation allowance under the declining-balance method.

Other assets are depreciated using the declining-balance method. The depreciation rates vary depending on when the assets were acquired. The following are the applicable rates for assets acquired on or after 1 January 1995.

<b>Asset</b>	<b>Rate (%)</b>
Office equipment	10 or 25
Motor vehicles	25
Computers	33.3
Plant and machinery	
Light	10 or 25
Heavy	25 or 33.3
Aircraft	40
Household furniture	10

*Balancing Adjustments.* Proceeds from disposals of assets are deducted from the residual value of the pool for that particular class of assets. Under the pool system, balancing charges or balancing allowances arise only on the disposal of all of the assets in a particular class.

*Initial Allowance.* A 10% initial allowance is granted on acquired industrial buildings that are used in manufacturing. Machinery and equipment used in manufacturing also qualify for an initial allowance at a rate of 75% in the year the expenditure is incurred. Lessees of plant and machinery may also claim this initial allowance if the lease transfers substantially all of the risks and rewards of ownership to the lessee. The rate of the 75% initial allowance is reduced to 20% for plant and machinery used in the production of sugar, petroleum or petrochemicals or in an industry enjoying concessions under the Fiscal Incentives Act.

The initial allowance reduces the asset's value for purposes of depreciation in subsequent periods.

**Relief for Losses.** Losses carried forward can be written off to the full extent of taxable profits for the tax year. The unrelieved balance can be carried forward indefinitely. No loss carryback is allowed.

**Groups of Companies.** Under group relief provisions in the tax law, a member of a group of companies (the surrendering company) may surrender current trading losses (exclusive of capital allowances) to another member of the group (the claimant company). The claimant company may then claim deductions for the losses in calculating its taxable income. To qualify for group relief, the surrendering company and the claimant company must be resident in Trinidad and Tobago and must be members of the same group throughout the respective accounting periods of each of the companies. Two companies are members of the same group if one is a wholly owned subsidiary of the other or both are wholly owned subsidiaries of a third company. The reduction in tax payable by the claimant company is limited to 25% of the tax that would have been payable if the relief had not been granted.

Group relief is available only if the claimant company has used all of its available capital allowances and offset its loss carryforwards against its current income.

#### **D. Value-Added Tax**

A value-added tax (VAT) applies to most products supplied and services rendered in Trinidad and Tobago. The standard rate is 15%. A 0% rate applies to certain items, including exports. Imports of inputs by highly capital intensive manufacturing corporations

are exempt from VAT if the corporation is declared an approved enterprise under the Fiscal Incentives Act and if at least 80% of the production of the corporation is exported.

Companies and other businesses are required to register for the tax if their turnover exceeds TT\$200,000 a year.

The Value-Added Tax Act allows the tax authorities to offset VAT refunds against any other tax liability, such as corporation tax or income tax.

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Trinidad and Tobago dollar floats. Commercial banks and licensed foreign-exchange dealers set the exchange rate. Residents may hold foreign currencies for their own account. Profits may be repatriated without the approval of the Central Bank of Trinidad and Tobago.

**Debt-to-Equity Rules.** In general, no thin-capitalization rules are imposed in Trinidad and Tobago. However, if a local company pays or accrues interest on securities issued to a nonresident company and if the local company is a subsidiary of, or a fellow subsidiary in relation to, the nonresident company, the interest is treated as a distribution and may not be claimed as a deduction against the profits of the local company.

## F. Treaty Withholding Tax Rates

The table below lists the withholding tax rates under Trinidad and Tobago's tax treaties. If the treaty rates are higher than the rates prescribed in the domestic law, the lower domestic rates apply.

	Dividends %	Interest %	Royalties %
CARICOM treaty (f)			
Antigua and Barbuda	0	15	15
Barbados	0	15	15
Belize	0	15	15
Dominica	0	15	15
Grenada	0	15	15
Guyana	0	15	15
Jamaica	0	15	15
Montserrat	0	15	15
St. Kitts and Nevis	0	15	15
St. Lucia	0	15	15
St. Vincent and the Grenadines	0	15	15
Canada	5/15 (e)	10	10
China	5/10 (c)	10	10
Denmark	10/15 (c)	15	15
France	10/15 (d)	10	10
Germany	10/15 (c)	10 (a)	10
India	10	10	10
Italy	10/15 (c)	10	5
Luxembourg	5/10 (g)	7.5/10 (h)	10
Norway	10/15 (c)	15	15
Sweden	10/15 (c)	10 (a)	20
Switzerland	10/15 (d)	10	10
United Kingdom	10/15 (c)	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
United States	10/15 (d)	15 (a)	15
Venezuela	5/10 (c)	15	10
Nontreaty countries	5/10 (b)	15	15

- (a) The rate applies to interest paid to banks and financial institutions. Interest paid to other recipients is taxed at 15% (Germany and Sweden) or 20% (United States).
- (b) See footnote (d) to Section A.
- (c) The lower rate applies if the recipient is a corporation owning 25% or more of the voting power of the distributing company.
- (d) The lower rate applies if the recipient is a corporation owning 10% or more of the voting power of the distributing company.
- (e) The lower rate applies if the recipient is a corporation owning 50% or more of the voting power of the distributing company.
- (f) The listed countries have ratified the Caribbean Community and Common Market (CARICOM) double tax treaty.
- (g) The lower rate applies if the recipient is a company holding directly at least 10% of the capital of the distributing company.
- (h) The lower rate applies to interest paid on deposits, commercial debts and borrowings from banking enterprises.

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### **A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	0
Interest	20 (b)(c)
Royalties	15 (d)
Gross Rents	5/15 (e)
Management Fees	5/15 (f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	4

- (a) This is the standard rate of corporate income tax. Oil companies, banks, financial institutions (for example, insurance companies) and telecommunication companies are subject to corporate income tax at a rate of 35%. Benefits from exportations realized on or after 1 January 2011 will be subject to corporate income tax at a rate of 10%.



- (b) Applicable to payments to residents and nonresidents.
- (c) The rate is 2.5% for interest paid on loans made by nonresident banks.
- (d) Applicable to payments to nonresidents. For further details, see Section B.
- (e) The 5% rate applies to payments to hotels. The 15% rate applies to other payments to residents and nonresidents.
- (f) The 5% rate applies to payments to residents; the 15% rate applies to payments to nonresidents.

## **B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income. A company is considered to be resident in Tunisia if it satisfies one of the following conditions:

- Its head office is located in Tunisia;
- It has a permanent establishment in Tunisia; or
- It is engaged in activities in Tunisia for more than 183 days in any 365-day period.

Nonresident companies are subject only to final withholding taxes on certain types of income derived from Tunisia, including interest and royalties (see *Royalties* below).

**Tax Rates.** The standard rate of corporate income tax is 30%. Oil companies, banks, financial institutions (for example, insurance companies) and telecommunication companies are subject to corporate income tax at a rate of 35%. Benefits from exportations realized on or after 1 January 2011 will be subject to corporate income tax at a rate of 10%.

The minimum tax payable is 0.1% of annual turnover (excluding turnover from exports).

The minimum tax may be credited against the corporate income tax payable for the current financial year, but it is not refundable.

Tax benefits, such as exemptions from certain taxes and duties, may be granted to companies established in a Tunisian Free Zone and to companies engaged wholly or partly in exporting.

**Capital Gains.** Capital gains are included in ordinary income and are taxed at the regular corporate income tax rate.

**Administration.** The financial year is generally the calendar year.

Tax returns must be filed by the 25th day of the third month following the end of a company's financial year. Consequently, for companies using the calendar year as their financial year, tax returns are due by 25 March.

Beginning with the second year of their activities, companies must pay tax in three installments. Each installment is equal to 30% of the corporate income tax due for the preceding financial year. The installments are payable by companies during the first 28 days of the sixth, ninth and twelfth months following the end of the financial year. The balance of tax due must be paid when a tax bill (a document that specifies the amount of tax due and when the tax must be paid) is filed.

**Dividends.** Dividends are not subject to tax in Tunisia.

**Royalties.** Subject to the provisions of double tax treaties, a 15% withholding tax is imposed on royalties paid to nonresidents. This tax applies to the following types of payments:

- Copyright royalties;
- Payments for the use of, or the right to use, patents, trademarks, designs, models, plans, formulas, manufacturing processes and movies, including proceeds received from sales of such items;
- Payments for the use of, or the right to use, industrial, commercial, agricultural, harbor or scientific equipment, except for amounts paid to charter a plane or vessel for international operations;
- Payments for information concerning industrial, commercial or scientific experience; and
- Payments for technical or economic studies or for technical assistance.

Companies wholly engaged in exporting (as defined) are exempt from the withholding tax on royalties.

**Foreign Tax Relief.** Tunisia does not grant any relief for foreign taxes.

### C. Determination of Trading Income

**General.** Taxable income is based on financial statements prepared in accordance with generally accepted accounting principles, subject to certain adjustments.

Business expenses are generally deductible unless specifically disallowed by the tax law. The following expenses are deductible:

- All types of expenses relating to production or the operation of a business;
- Tax depreciation (see *Tax Depreciation* below);
- Attendance fees paid to members of the board of directors or the supervisory board, limited to the amount of expenses incurred by these individuals in carrying out their duties;
- Interest paid to shareholders on loans if the amount of the loan does not exceed 50% of authorized capital, if the interest rate does not exceed 8% and if the share capital is fully paid up;
- Donations and subsidies paid to charities and organizations established for the public good that are engaged in philanthropic, educational, scientific, social or cultural activities, up to a maximum deduction of 2% of gross turnover;
- Amounts paid to social funds established for employees in accordance with the law; and
- Gifts and meal expenses, up to a maximum deduction of the lower of 1% of annual gross income or TD 20,000.

**Inventories.** Inventories are valued at cost.

**Provisions.** Doubtful debts of up to TD 100 (TD 500 for banks) per debtor are deductible if they were due at least one year prior to the date on which they were written off and if the company has had no further business relationship with the debtor.

The following provisions are deductible, up to a maximum deduction of 50% of taxable income:

- Reserves for doubtful debts for which recovery is being pursued in the courts;
- Provisions for finished goods; and
- Provisions for depreciation of shares of listed companies.

**Tax Depreciation.** Under the Tunisian Tax Code, depreciation must be computed using the straight-line method. Depreciation is deduc-

tible only if it is recorded in the accounts and if it is in accordance with the customs of companies carrying out the business activity (*les usages*).

The following are some of the standard rates of depreciation allowed in Tunisia.

Asset	Rate (%)
Furniture and tools	10
Cars and movable equipment	20
Engines and ships	20
Computer hardware	15
Computer software	33

For equipment other than transportation equipment, the depreciation rates may be increased by 50% if the equipment is used at least 16 hours a day and may be doubled if it is used 24 hours a day. Computer hardware with a useful life of five or more years may be depreciated at a rate of 2.5 times the normal straight-line rates.

The costs of setting up a business may be amortized at a rate of 33% if the costs are very high. Otherwise, 100% of the costs may be deducted in the year of expenditure. Assets worth less than TD 200 are fully deductible in the year of acquisition.

**Relief for Losses.** Losses may be carried forward four years, but may not be carried back.

**Groups of Companies.** Tunisian law provides for the fiscal integration of related parties equivalent to a consolidated filing position if certain conditions are satisfied.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax, on all transactions carried on in Tunisia, including imports	
Normal rate	18%
Other rates	6%/12%
Tax on industrial, professional and commercial entities; imposed on gross income of companies subject to corporate income tax; maximum annual tax is TD 60,000	0.2%
Professional training tax, on salaries, allowances and fringe benefits paid by an employer	2%
Fund for the Promotion of Employee Housing (Fonds pour la Promotion du Logement des Salariés or FORPROLOS), on salaries, allowances and fringe benefits paid by an employer	1%
Social security contributions, on employee's annual salary; paid by	
Employer	16.57%
Employee	7.75%

(The rate of employee contributions is increased to 8.47%, effective from 1 July 2008 and to 9.19%, effective from 1 July 2009.)

Nature of Tax	Rate
Registration duties	
Work contracts	TD 15 per page
Company formation	TD 100 per copy of the articles of association

## E. Foreign-Exchange Controls

For companies wholly or partially owned by nonresidents, the remittance of benefits, dividends, attendance fees and interest payments to nonresidents is guaranteed. Tunisian branches of foreign companies may freely remit their after-tax profits. Remittances must be made through a registered intermediary, which is generally a bank. Foreign loans not exceeding TD 3 million a year may be obtained by Tunisian companies.

## F. Treaty Withholding Tax Rates

	Dividends (t) %	Interest %	Royalties %
Algeria	20/30	15	15
Austria	20 (a)	10	10/15 (j)
Belgium	15	15	5/15/20 (b)(k)
Canada	15	15	15/20 (b)(l)
Denmark	15	12	15
Egypt	–	10	15
France	–	12	0/5/15/20 (b)(m)
Germany	15 (a)	10	10/15 (n)
Italy	15	12	5/12/16 (o)
Korea	–	12	15
Morocco	– (c)	– (i)	15
Netherlands	20 (v)	10	11
Norway	20	12	5/15/20 (b)(p)
Romania	12	10	12
Senegal	– (c)	15	–
Spain	15 (d)	10	10
Sweden	20 (e)	12	5/15 (q)
Switzerland	10	10	10
Turkey	15 (f)	10	10
United Kingdom	20 (g)	10/12 (s)	15
United States	20 (h)	15	10/15 (r)
Nontreaty countries	0	20 (u)	15 (w)

- The rate is 10% if the recipient is a company that holds at least 25% of the capital of the payer.
- Tunisia applies a 15% rate instead of the highest rate.
- Dividends are taxed at the domestic rate of the country from which the dividends originate.
- The rate is 5% if the beneficial owner of the dividends is a company that holds directly at least 50% of the capital of the payer.
- The rate is 15% if the recipient is a company that owns at least 25% of the capital of the payer.
- The rate is 12% if the recipient is a company that owns at least 25% of the capital of the payer.
- The rate is 12% if the beneficial owner is a company that controls directly at least 25% of the voting power of the payer.
- The rate is 14% if the recipient is a company that owns at least 25% of the capital of the payer.
- Taxed at the domestic rate of the country of domicile of the recipient.
- The 10% rate applies to royalties paid for the use of or right to use copyrights of literary, scientific or artistic works, but not including cinematographic and television films. The 15% rate applies to royalties paid for the use of or right to use technical and economic studies; cinematographic and television films;

- patents, trademarks, designs and models, plans, and secret formulas and processes; industrial, commercial and scientific equipment; or information concerning agricultural, industrial, commercial or scientific experience.
- (k) The 5% rate applies to royalties paid for the use of or right to use copyrights of literary, scientific or artistic works. The 15% rate applies to royalties or other amounts paid for the use of or right to use patents, designs and models, plans, and secret formulas and processes; information relating to industrial, commercial or scientific experience; technical and economic studies; and technical assistance relating to the use of the above-mentioned items. The 20% rate applies to royalties or other amounts paid for the use of or right to use trademarks; cinematographic and television films; and agricultural, industrial, harbor, commercial or scientific equipment.
  - (l) The 20% rate applies to royalties paid for the use of or right to use trademarks, cinematographic and television films or videotapes for television, and industrial, harbor, commercial or scientific equipment. The 15% rate applies to other royalties.
  - (m) The 0% rate applies to amounts paid to a public body of the other contracting state for the use of cinematographic films or radio and television broadcasts. The 5% rate applies to royalties paid for the use of or right to use copyrights of literary, scientific or artistic works, but not including cinematographic and television films. The 15% rate applies to royalties or other amounts paid for the use of patents, designs and models, plans, and secret formulas and processes; information relating to industrial, commercial or scientific experience; or technical and economic studies. The 20% rate applies to royalties or other amounts paid for the use of or right to use trademarks; cinematographic and television films; and agricultural, industrial, harbor, commercial or scientific equipment.
  - (n) The 10% rate applies to royalties or other amounts paid for the use of or right to use the following: copyrights of literary, scientific or artistic works, but not including cinematographic and television films; information concerning agricultural, industrial, commercial or scientific experience; and economic and technical studies. The 15% rate applies to royalties paid to use patents, trademarks, designs and models, plans, secret formulas and processes, and cinematographic and television films.
  - (o) The 5% rate applies to royalties relating to literary, scientific or artistic works. The 16% rate applies to royalties relating to trademarks, cinematographic and television films, or industrial, commercial or scientific equipment. The 12% rate applies to other royalties.
  - (p) The 5% rate applies to royalties paid for the use of or right to use copyrights of literary, scientific or artistic works, but not including cinematographic and television films. The 15% rate applies to royalties or other amounts paid for the use of patents, designs and models, plans, and secret formulas and processes; information relating to industrial, commercial or scientific experience; or technical or economic studies. The 20% rate applies to royalties or other amounts paid for the use of or the right to use trademarks; cinematographic and television films; and agricultural, industrial, harbor, commercial or scientific equipment.
  - (q) The 5% rate applies to royalties paid for the use of or right to use copyrights of literary, scientific or artistic works, not including motion picture and television films. The 15% rate applies to other royalties.
  - (r) The 10% rate applies to royalties paid for the use of or the right to use industrial, commercial or scientific equipment, or to remuneration for the performance of accessory technical assistance for the use of property or rights described above, to the extent such technical assistance is performed in the contracting state where the payment for the property or right has its source. The 15% rate applies to royalties or other amounts paid for the use of or right to use copyrights of literary, artistic and scientific works, including cinematographic and television films and videotapes used in television broadcasts; patents, trademarks, designs and models, plans, and secret formulas and processes; and information relating to industrial, commercial or scientific experience.
  - (s) The 10% rate applies if the beneficial owner of the interest is a bank or other financial institution. The 12% rate applies to other interest.
  - (t) Under Tunisian domestic law, dividends are not subject to tax. Consequently, withholding tax is not imposed on dividends paid from Tunisia to other countries.
  - (u) A 2.5% rate applies to interest paid to banks.
  - (v) The rate is 0% if the beneficiary of the dividends owns at least 10% of the payer.
  - (w) For further details, see Section B.

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*This chapter reflects the tax law as of 31 October 2007. Readers should obtain updated information before engaging in transactions.*

## A. At a Glance

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20 (a)
Branch Tax Rate (%)	20
Withholding Tax (%)	
Dividends	15 (b)

Interest (a)	
From Repurchase (REPO) Agreements	15 (c)(d)
From Turkish Government Bonds and Bills and Private Sector Bonds	0/10 (e)
From Deposit Accounts	15 (c)(f)
From Loans Granted by Foreign Financial Institutions	0 (g)
From Loans Granted by Other Foreign Entities	10 (g)
Royalties from Patents, Know-how, etc.	20 (h)
Professional Fees	
Petroleum-Exploration Activities	5 (h)(i)
Other Activities	20 (h)(j)
Progress Billings on Long-Term Construction and Repair Contracts	3 (j)(k)
Payments on Financial Leases	1 (h)
Real Estate Rental Payments	20 (c)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (l)

- (a) Capital gains and interest income derived by nonresident companies that do not have a permanent establishment or a permanent representative in Turkey from securities or other investment instruments (excluding deposits and overnight agreements) traded in the Turkish financial market are not subject to withholding tax.
- (b) This withholding tax is imposed on dividends distributed to nonresident companies (except for dividends paid to Turkish permanent establishments or permanent representatives of nonresident companies) and to resident and nonresident individuals. Nonresidents that do not have a permanent establishment or a permanent representative in Turkey are not subject to withholding tax on profits derived by mutual funds, regardless of whether the profits are distributed (see Section C).
- (c) This withholding tax applies to resident and nonresident companies and individuals.
- (d) This withholding tax applies if the repurchase agreement is based on a state bond or treasury bill.
- (e) The 0% rate applies to nonresident entities and individuals. The 10% rate applies to residents for bonds and bills issued after 1 January 2006.
- (f) A withholding tax rate of 15% applies to deposit interest, regardless of the maturity and regardless of whether the deposits are denominated in Turkish lira or foreign currency.
- (g) The principal of loans that are denominated in foreign exchange and remitted to Turkish residents (excluding banks and other financial institutions) by foreign financial institutions and that have an average maturity of less than one year are subject to a 3% contribution to the Resource Utilization Support Fund (RUSF).
- (h) This withholding tax applies to nonresident companies.
- (i) Optionally, this withholding tax is a final tax imposed on these payments. Alternatively, net income may be subject to corporation tax at a rate of 20% (for 2007).
- (j) This withholding tax is credited against the final tax liability.
- (k) This withholding tax applies to resident and nonresident companies.
- (l) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies whose legal or business headquarters (as stated in their articles of association) are located in Turkey or whose operations are centered and managed in Turkey are subject to corporation tax on their worldwide income. In Turkish tax legislation, they are described as full liability taxpayers; they are also known as resident companies.

Taxable income of limited liability taxpayers (nonresident companies or taxpayers other than full liability taxpayers) is comprised of the following:

- Professional fees obtained in Turkey;
- Profits from commercial, agricultural and industrial enterprises in Turkey (if they have an establishment or a permanent representative in Turkey);
- Income arising from rental of real estate, rights and movable property in Turkey;
- Income obtained in Turkey from various types of securities; and
- Other income and revenue obtained in Turkey.

**Rate of Corporate Tax.** For 2007, the effective corporation tax rate is 20%.

**Participation Exemption.** The Turkish tax law provides a participation exemption for dividends derived by Turkish companies from foreign participations. Dividends qualifying for the participation exemption are fully exempt from corporation tax.

To qualify for the participation exemption for dividends derived from foreign participations, all of the following conditions must be satisfied:

- The Turkish company must have owned at least 10% of the shares of the foreign company for an uninterrupted period of at least one year as of the date of receiving the dividend;
- The foreign company must be in the nature of a limited or joint stock company; and
- The foreign company must be subject to corporate tax at an effective rate of at least 15% (for corporations whose principal activities is the procurement of finance and insurance, the rate must be at least the rate of corporation tax in Turkey, which is 20% for 2007).

The effective corporate tax is determined in accordance with the following formula:

$$\text{Effective corporate tax rate} = \frac{\text{corporate tax}}{\text{(distributable corporate income} + \text{corporate tax)}}$$

The participation exemption also applies to income derived from permanent establishments (PEs) and permanent representative resident abroad if the following conditions are met:

- The PE or permanent representative is subject to corporate tax at an effective rate of at least 15% in the country where the PE or permanent representative is located (for PEs whose principal activities are the procurement of finance (including financial leasing) or investment in marketable securities and insurance, the rate must be at least the rate of corporation tax in Turkey, which is 20% for 2007); and
- Income derived from foreign PEs must be transferred to Turkey by the due date of filing of the annual corporate tax return (25 April).

Special participation exemption rules apply to companies established in foreign countries whose principal purpose is construction, repair, assembly and technical services. If, under the laws of a foreign country, the establishment of a corporation is necessary to undertake these activities, dividends repatriated by the foreign subsidiary to the Turkish parent company qualify for the partici-



pation exemption, regardless of whether the conditions described above for the participation exemption are satisfied.

A participation exemption also applies to capital gains. For details, see *General* in Section C.

**International Holding Companies.** A special regime applies to international holding companies.

International holding companies may benefit from the participation exemption with respect to dividends derived from foreign participations if they satisfy the conditions applicable to other entities (see *Participation Exemption* above). They also may benefit from the participation exemption with respect to capital gains, but different conditions apply. Turkish international holding companies benefit from the participation exemption with respect to capital gains if foreign participations account for at least 75% of the noncash assets of the international holding company and if the international holding company has held a shareholding of 10% or more in the foreign company for at least two years.

Dividends distributed by international holding companies to non-resident companies out of profits derived from their foreign participations are subject to a withholding tax rate equal to one-half of the general withholding tax rate on dividends. As a result, the withholding tax rate is 7.5%.

**Capital Gains.** Capital gains derived by all companies, including branches of foreign companies, are included in ordinary income and are subject to corporation tax. Capital gains are generally computed by subtracting the cost of the asset, including the related expenses paid by the seller, from the selling price.

Capital gains derived from sales of depreciable fixed assets are not taxable to the extent the gains are reinvested in new fixed assets. However, the amount of gains used to acquire new assets is subtracted from the depreciable cost of the new asset. Capital gains that will be used for reinvestment are transferred to a special reserve account. If the special reserve is not used to finance the purchase of similar new assets in the following three years, the balance in the reserve is included in taxable income.

Capital gains derived from sales of resident companies' shares by nonresident companies without a permanent establishment in Turkey are subject to corporation tax. In computing these gains, changes in exchange rates are not taken into account.

**Administration.** Companies file tax returns based on their financial accounting year.

Tax returns must be submitted to relevant tax office by the 25th day of the 4th month after the end of the accounting period. The return must be accompanied by a balance sheet and an income statement.

Corporation tax due must be paid by the end of the fourth month following the end of the accounting period.

Companies must make quarterly payments of advance corporation tax during the tax year. These payments are each equal to 20% of the taxable income for the quarter. The advance tax may be offset against the tax shown on the annual corporation tax return.

If advance corporation tax exceeds the final tax payable, the excess can be deducted from the company's other tax liabilities or it can be refunded.

**Dividends.** Dividends received by resident companies from other resident companies are not subject to corporation tax.

Dividends received from foreign companies are included in taxable income. However, certain dividends received from foreign companies may qualify for exemption from corporation tax under the participation exemption or the international holding regime (see *Dividends* above and *International Holding Regime* above).

A 15% withholding tax is imposed on dividends paid by resident corporations to the following recipients: resident individuals; resident recipients who are not subject to corporation tax and income tax, or are exempt from such taxes; nonresident individuals; nonresident corporations (excluding those receiving dividends through a PE or permanent representative in Turkey); and nonresident recipients who are exempt from corporation tax and income tax.

A branch remittance tax is imposed at a rate of 15% on profits remitted by nonresident corporations that have a PE or permanent representative in Turkey to their headquarters.

**Foreign Tax Relief.** Resident companies that have a direct or indirect participation in shares or voting rights of 25% or more in foreign subsidiaries can claim a tax credit for the corporate or income tax paid by foreign subsidiaries in their jurisdictions on profits out of which dividend distributions were paid to the resident companies. The credit is limited to the tax in Turkey that is attributable to the dividend distributions. As a result, the credit applies only to dividends that do not qualify for the participation exemption.

Foreign tax that cannot be offset against the corporate tax in Turkey because of insufficient corporate income may be carried forward for a period of three years. The tax credit can also be offset against provisional tax payments.

### C. Determination of Trading Income

**General.** The corporate tax base is determined by deducting expenses from the revenue of an enterprise. However, the following items are not subject to corporation tax:

- Revenue derived by corporations, including nonresident companies, from participations in the capital of other corporations that are subject to full corporate taxation, excluding shares of profits from participation certificates of investment funds and stocks in investment partnerships;
- Proceeds derived by corporations from the sale of their preferred shares, and profits derived by joint stock companies from the sale of their shares at the time of the establishment of the company and from the sale of their shares at a price exceeding the par value of the shares when they are increasing their capital; and
- Seventy-five percent of profits derived from disposals of shares, preferred shares, preemptive rights, bonus shares or real estate owned for at least two years if the profit is placed in a reserve account and not distributed for five years.

Corporation tax exemptions are available under the participation exemption and the international holding regime (see Section B). In addition, the following corporate tax exemptions apply to Turkish and foreign investment funds and companies:

- Profits derived by mutual funds (excluding foreign-exchange funds) and trusts from transactions involving their operating portfolio. Profits derived from such instruments by nonresidents are no longer subject to withholding tax.
- Profits derived by risk capital investment funds or companies from transactions involving their operating portfolio.
- Profits derived by real estate investment funds or companies from transactions involving their operating portfolio.
- Profits derived by designated private pension investment funds.

All business-related expenses are deductible, with the following exceptions:

- Interest on shareholder's equity or on advances from shareholders.
- Reserves set aside from profits (except technical reserves of insurance companies and doubtful debts from debtors against whom legal proceedings have been instituted).
- Corporation tax and all monetary and tax penalties and interest imposed on such tax.
- Discounts or other losses arising from selling the corporation's own securities for less than par value.
- For nonresident companies, commissions, interest and other charges paid to headquarters or other offices outside Turkey on purchases or sales made on their behalf, as well as allocated charges to contribute to losses or expenses of headquarters or branches outside Turkey. However, charges are deductible if they are made in accordance with allocations keys that are in compliance with arm's length principle and if they are related to the generation and maintenance of business income in Turkey.
- Interest, foreign-exchange differences or comparable expenses that are calculated or paid on disguised capital (see *Debt-to-Equity Rules* in Section E).
- Disguised profit distribution through improper transfer pricing.

**Provisions.** Tax-deductible provisions include provisions for bad debts, for abandoned claims and for insurance technical reserves.

**Tax Depreciation.** Effective from 1 January 2004, the useful life concept was introduced with respect to the depreciation of fixed assets. The Ministry of Finance has issued a Communiqué, which sets forth the useful lives of different types of fixed assets. The following are examples of the useful lives for various fixed assets.

Asset	Useful Life (Years)
Buildings	50
Office furniture, office equipment and automobiles	5
Computers	4
Computer software and cellular phones	3

The taxpayers may select the straight-line method or the declining-balance method to calculate depreciation. A company may change from the declining-balance method to the straight-line method (but the reverse change is not permitted) at any time during the useful life of a fixed asset. A company may exercise this option on an asset-by-asset basis.

For company automobiles, tax depreciation for the year of purchase is calculated on a monthly basis. For example, if an automobile that was purchased for YTL 1,000 is depreciated using a straight-line depreciation rate of 20%, the regular depreciation for a full year is YTL 200. Under the applicable rules, if such an automobile is acquired in November, tax-deductible depreciation for the year of acquisition is calculated as follows:

$$\frac{2 \text{ months}}{12 \text{ months}} \times \text{YTL } 200 = \text{YTL } 33.33$$

The balance of the regular depreciation for the year of acquisition is deductible in the last year of depreciation of the asset, together with the regular depreciation for the last year.

**Investment Allowance.** Effective from 1 January 2006, the investment allowance was abolished. Before this date, companies could deduct 40% of the cost of eligible fixed assets as investment allowances. However, companies that made investments before 1 January 2006 may claim an investment allowance in accordance with the rules in effect on 31 December 2005 with respect to new expenditure if the new expenditure is economically and technically related to investments made before 1 January 2006. In addition, companies that did not benefit from the investment allowance as a result of insufficient taxable income may deduct the unused amount of the investment allowance in years following the year of the expenditure. This amount is indexed for inflation. The measures described in the preceding three sentences apply until the end of 2008. Companies that elect to benefit from the investment allowance are taxed at a rate of 30% instead of the normal corporate income tax rate of 20%.

**Relief for Losses.** In general, losses may be carried forward for five years. Losses cannot be carried back. An order of priority applies for the use of losses and exemptions to offset taxable income for the year. Past years' losses must be used first, then exemptions and finally investment allowances.

Resident companies may deduct the losses incurred in business activities performed abroad if the foreign losses are approved by auditors authorized under the laws of the relevant jurisdiction. Foreign losses may not be deducted if income arising from the foreign activity would have been exempt from corporation tax in Turkey.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; imposed on goods delivered and services rendered, including imported goods and services, communications, conveyances by pipeline and certain leases; exports are excluded	
General rate	18
Rates on other items	1/8
Local withholding taxes, on amounts paid to nonresident corporations for advertising, building construction, entertainment and petroleum products	Various

Nature of Tax	Rate (%)
Banking and insurance transactions tax, on all types of payments received by banking and insurance companies with respect to all types of transactions, except for financial leasing transactions	
Interbank deposit accounts	1
Interbank cambio transactions	0
Other cambio transactions	0.1
Other payments	1 to 5
Special consumption tax; imposed on the importation and the initial acquisition of certain goods	
Cars	10 to 84
Buses	1
Midibuses and minibuses	4 to 9
Planes	0.5
Sailboats	6.7 to 8
Alcoholic beverages	48.7 to 275.6
Tobacco	58
Luxury goods	6.7 to 20
Social security contributions; imposed on salaries of Turkish citizens; premiums are paid within monthly upper and lower limits and are calculated as a percentage of gross salary; from 1 July 2007 through 31 December 2007, the monthly lower limit is YTL 585 and the upper limit is YTL 3,802.50	
Employer	19.5
Employee	14
Unemployment insurance contributions, paid on same base as social security contributions	
Employer	2
Employee	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Turkey has a liberal foreign-exchange regime, which allows local foreign-exchange accounts.

Law No. 4875 guarantees the remittance of profits. The company's bank may transfer profits, provided the company subsequently submits to the bank its approved tax statement and its tax accrual and payment slips. This law also guarantees the remittance of the proceeds from the liquidation of an investment.

Fees and royalties from management agreements, technical services agreements and license contracts may be remitted abroad, and applicable withholding tax must be deducted.

Foreign investment partnerships and funds may invest in Turkish securities and freely remit dividends, interest, profits and capital.

**Transfer Pricing.** New transfer-pricing rules, which are more objective than the prior rules, took effect on 1 January 2007. Under the new rules, the traditional transfer-pricing methods recommended in the Organization for Economic Cooperation and Development (OECD) model transfer-pricing guidelines are acceptable. The following are traditional methods mentioned in the guidelines:

- Comparable uncontrolled price method;
- Cost-plus method; and
- Resale price method.

However, taxpayers may select other transfer-pricing methods if they can establish that the traditional methods are not suitable for their transactions. It is possible to enter into advance-pricing agreements with the tax authorities.

The new transfer-pricing rules apply to both domestic and foreign related party transactions. Commercial transactions conducted by persons resident in low-tax jurisdictions (tax havens) are considered to be related-party transactions.

The Ministry of Finance is expected to issue a Communiqué clarifying the transfer-pricing rules. It is also expected to identify low-tax jurisdictions for Turkish tax purposes.

**Debt-to-Equity Rules.** Under the new thin-capitalization rules, a “related party” is a person holding, directly or indirectly, at least 10% of the shares or voting rights of the other party.

Borrowings from related parties that exceed a debt-to-equity ratio of 3:1 are considered to be disguised capital. For borrowings from related parties that are banks or financial institutions, the debt-to-equity ratio is 6:1. Total borrowings from all related parties are treated collectively.

The equity at the beginning of the taxpayer’s fiscal year applies for thin-capitalization purposes. Interest paid or accounted for and foreign-exchange differences exceeding the debt-to-equity ratio are regarded as nondeductible expenses in determining the corporate tax base. Interest paid or accounted for that is considered to be nondeductible under the thin-capitalization rules is treated as a dividend and is subject to dividend withholding tax.

**Controlled Foreign Companies.** The controlled foreign company (CFC) rules apply if resident individuals and corporate taxpayers jointly or severally have a direct or indirect participation of 50% or more in the shares, dividend rights or voting rights in a foreign company that meets all of the following conditions:

- Twenty-five percent or more of the foreign company’s income is of a passive nature (portfolio investment income). If the business activities of the company are not commensurate with the capital, organization or the work force of the company, income derived from commercial, agricultural or independent personal services may be regarded to be of a passive nature.
- The foreign company is subject to effective corporate taxation at a rate of less than 10%.
- The gross revenue of the foreign company exceeds YTL 100,000 (approximately US\$75,000).

If the foreign company falls within the scope of the Turkish CFC measures, Turkish resident taxpayers declare corporate income of the foreign company attributable to them. In the event of a dividend distribution by the foreign company, the recipient of the dividend is taxed only to the extent that the amount has not been taxed in accordance with the CFC rules.

**Antiavoidance Measures.** Under a new measure, Turkish resident taxpayers are subject to a 30% withholding tax on all payments

made in cash or on account that relate to transactions with persons resident in countries that the Council of Ministers considers to be in harmful tax competition. The principal, interest or profit contributions corresponding to the debts to financial institutions established outside Turkey and payments to insurance and reinsurance companies established outside Turkey are not subject to the 30% withholding tax. The Council of Ministers has the authority to reduce the withholding tax rate to 0% for transactions that are considered to be performed at arm's length.

The payments taxed in accordance with the rules described in the preceding paragraph are not subject to further corporate tax or income tax.

**Mergers and Acquisitions.** Mergers, acquisitions and demergers may be tax-free if the transaction involves two resident companies and if the assets are transferred at book value.

## F. Treaty Withholding Tax Rates

The following are the maximum withholding rates for dividends, interest and royalties provided under Turkey's double tax treaties.

	Dividends %	Interest %	Royalties %
Albania	5/15 (a)	10	10
Algeria	12	10	10
Austria	25/35 (b)	15	10
Azerbaijan	12	10	10
Bahrain	10/15 (c)	10	10
Bangladesh	10	10	10
Belarus	10/15 (c)	10	10
Belgium	15/20 (d)	15	10
Bosnia-Herzegovina	5/15 (a)	10	10
Bulgaria	10/15 (c)	10	10
China	10	10	10
Croatia	10	10	10
Czech Republic	10	10	10
Denmark	15/20 (e)	15	10
Egypt	5/15 (a)	10	10
Estonia	10	10	5/10 (f)
Ethiopia	10	10	10
Finland	15/20 (e)	15	10
France	15/20 (g)	15	10
Germany	15/20 (g)	15	10
Greece	15	12	10
Hungary	10/15 (c)	10	10
India	15	10/15 (h)	15
Indonesia	10/15 (c)	10	10
Iran	15/20 (e)	10	10
Israel	10	10	10
Italy	15	15	10
Japan	10/15 (c)	10/15 (i)	10
Jordan	10/15 (c)	10	12
Kazakhstan	10	10	10
Korea	15/20 (e)	10/15 (j)	10
Kuwait	10	10	10
Kyrgyzstan	10	10	10
Latvia	10	10	5/10 (f)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Lebanon	10/15 (o)	10	10
Lithuania	10	10	5/10 (f)
Luxembourg	10/20 (l)	10/15 (m)	10
Macedonia	5/10 (n)	10	10
Malaysia	10/15 (c)	15	10
Moldova	10/15 (c)	10	10
Mongolia	10	10	10
Morocco	7/10 (k)	10	10
Netherlands	5/10 (p)	10/15 (m)	10
Northern Cyprus	15/20 (e)	10	10
Norway	25/30 (q)	15	10
Pakistan	10/15 (c)	10	10
Poland	10/15 (c)	10	10
Portugal	5/15 (bb)	10/15 (m)	10
Romania	15	10	10
Russian Federation	10	10	10
Serbia and Montenegro	5/15 (a)	10	10
Singapore	10/15 (c)	7.5/10 (r)	10
Slovak Republic	5/10 (n)	10	10
Slovenia	10	10	10
South Africa	10/15 (c)	10	10
Spain	5/15 (s)	10/15 (t)	10
Sudan	10	10	10
Sweden	15/20 (e)	15	10
Syria	10	10	10/15 (u)
Tajikistan	10	10	10
Thailand	10/15 (c)	10/15 (v)	15
Tunisia	12/15 (w)	10	10
Turkmenistan	10	10	10
Ukraine	10/15 (c)	10	10
United Arab Emirates	5/10/12 (x)	10	10
United Kingdom	15/20 (e)	15	10
United States	15/20 (g)	10/15 (y)	5/10 (f)
Uzbekistan	10	10	10
Nontreaty countries	15 (z)	0/10/15 (aa)	20 (aa)

- (a) The 5% rate applies if the recipient owns more than 25% of the payer of the dividends. The 15% rate applies to other dividends.
- (b) The 25% rate applies if the recipient owns more than 25% of the payer of the dividends. The 35% rate applies to other dividends.
- (c) The 10% rate applies if the recipient owns more than 25% of the payer of the dividends. The 15% rate applies to other dividends.
- (d) The 15% rate applies if the recipient owns more than 10% of the payer of the dividends. The 20% rate applies to other dividends.
- (e) The 15% rate applies if the recipient owns more than 25% of the payer of the dividends. The 20% rate applies to other dividends.
- (f) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (g) The 15% rate applies if the recipient owns more than 10% of the payer of the dividends. The 20% rate applies to other dividends.
- (h) The 10% rate applies to interest on loans granted by banks and financial institutions. The 15% rate applies to other interest payments.
- (i) The 10% rate applies to interest on loans granted by financial institutions. The 15% rate applies to other interest payments.
- (j) The 10% rate applies to interest paid with respect to a loan or other debt claim with a term exceeding two years. The 15% rate applies to other interest payments.
- (k) The 7% rate applies if the beneficial owner of the dividends owns more than 25% of the payer of the dividends. The 10% rate applies to other dividends.



- (l) The 10% rate applies if the recipient owns more than 25% of the payer of the dividends. The 20% rate applies to other dividends.
- (m) The 10% rate applies to interest on loans with a term exceeding two years. The 15% rate applies to other interest payments.
- (n) The 5% rate applies if the recipient owns more than 25% of the payer of the dividends. The 10% rate applies to other dividends.
- (o) The 10% rate applies if the beneficial owner of the dividends owns more than 15% of the payer of the dividends. The 15% rate applies to other dividends.
- (p) The 5% rate applies to dividends distributed by Dutch companies. The 10% rate applies to dividends distributed by Turkish companies.
- (q) The 25% rate applies if the recipient owns more than 25% of the payer of the dividends. The 30% rate applies to other dividends.
- (r) The 7.5% rate applies to interest on loans paid by financial institutions. The 10% rate applies to other interest payments.
- (s) The 5% rate applies to dividends to the extent they are paid out of profits that have been subject to tax as specified in the tax treaty and if the recipient owns more than 25% of the payer of the dividends. The 15% rate applies to other dividends.
- (t) The 10% rate applies to interest on loans granted by banks. The 15% rate applies to other interest payments.
- (u) The 10% applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films and recordings for radio and television. The 15% rate applies to royalties paid for patents, trademarks, designs or models, plans, secret formulas or processes, or for information concerning industrial, commercial or scientific experience.
- (v) The 10% rate applies to interest on loans granted by banks, financial institutions and insurance companies. The 15% rate applies to other interest payments.
- (w) The 12% rate applies if the recipient owns more than 25% of the payer of the dividends. The 15% rate applies to other dividends.
- (x) The 5% rate applies if the recipient of the dividends is the government, a public institution wholly owned by the government or a political subdivision or local authority of the other contracting state. The 10% rate applies if the recipient owns more than 25% of the payer of the dividends. The 12% rate applies to other dividends.
- (y) The 10% rate applies to interest derived from loans granted by financial institutions, such as banks, savings institutions or insurance companies. The 15% rate applies to other interest payments.
- (z) See Section B.
- (aa) See Section A.
- (bb) The 5% rate applies if, for an uninterrupted period of at least two years, the recipient owns more than 25% of the payer of the dividends. The 15% rate applies to other dividends.

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### A. At a Glance

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	30 (a)
Branch Tax Rate (%)	30

Withholding Tax (%)	
Dividends	15 (b)
Interest	15 (b)
Royalties from Patents, Know-how, etc.	15 (c)
Management Fees	15 (c)
Professional Fees	
Residents	6 (d)
Nonresidents	15
Payments by Government Entities, etc.	6 (e)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0 (f)
Carryforward	Unlimited

- (a) Applicable to capital gains on business assets only.
- (b) Applicable to residents and nonresidents (see Section B for further details).
- (c) Applicable to nonresidents.
- (d) This withholding tax is imposed on resident professionals who are not registered for value-added tax.
- (e) Imposed on payments in excess of U Sh 1 million to any person in Uganda for goods and services supplied to, or under a contract with, the government, a local authority, an urban authority or a company controlled by the government of Uganda.
- (f) In general, loss carrybacks are not allowed. However, for long-term construction contracts that result in a loss in the final year, a loss carryback for an unlimited number of years is allowed.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Resident companies are subject to tax on their worldwide income, but tax credits are granted for taxes paid on foreign-source income (see *Foreign Tax Relief* below). Non-resident companies are subject to tax on income derived from sources in Uganda.

A company is resident in Uganda if any of the following applies:

- It is incorporated in Uganda;
- The management and control of its affairs are exercised in Uganda during the tax year; or
- During the tax year, it performs the majority of its operations in Uganda.

**Rates of Corporate Tax.** For the year ending 30 June 2008, the regular corporate income tax rate is 30%. For mining companies, the tax rate ranges from 25% to 45%, depending on the profitability of the mine.

**Capital Gains.** Capital gains on business assets are subject to tax at a rate of 30%.

**Administration.** Companies must file provisional income tax returns within six months after the beginning of the accounting period. This return includes an estimate of the income that will be earned by the company during the accounting period. The tax liability shown in the provisional return must be paid in two equal installments, which are due 6 months and 12 months after the beginning of the accounting period. A final tax return must be filed within six months after the end of the accounting period, and any balance of tax due must be paid when this return is filed.

Penalties are imposed if the final tax liability for the year exceeds the tax liability shown in the provisional return by more than 10%.

However, the penalty for underestimating provisional tax does not apply to companies engaged in agricultural, plantation or horticultural farming.

**Dividends.** Dividends paid to residents and nonresidents are subject to withholding tax at a general rate of 15%. However, the withholding tax does not apply if the recipient of the dividends is a resident company that controls at least 25% of the voting power in the payer. The withholding tax rate is 10% for dividends paid by companies listed on the stock exchange to individuals. The withholding tax on dividends paid to nonresidents and to resident individuals is considered a final tax.

**Interest.** Interest paid to residents and nonresidents is subject to a withholding tax at a rate of 15%. However, this withholding tax does not apply if any of the following circumstances exist:

- The recipient of the interest is a resident company that controls at least 25% of the voting power in the payer;
- The recipient is a financial institution; or
- The interest is paid by a natural person to a resident.

The withholding tax for interest paid on government securities is considered a final tax. Interest paid by resident companies to nonresident financial institutions with respect to debentures is exempt from tax.

**Foreign Tax Relief.** A foreign tax credit is granted for foreign tax paid on foreign-source income taxable in Uganda. The credit is limited to the equivalent of the Uganda tax on such income.

### **C. Determination of Trading Income**

**General.** Taxable income is the income reported in the companies' financial statements, subject to certain adjustments. Expenses are deductible to the extent that they are incurred in the production of taxable income.

**Inventories.** For tax purposes, inventory is valued at the lower of cost or market value.

**Provisions.** Only financial institutions and insurance companies may deduct specific provisions for bad debts.

Bad trade debts may be deducted when they are written off if all reasonable steps have been taken to recover the debt without success.

**Tax Depreciation.** Depreciation charged in companies' financial statements is not deductible for tax purposes, but capital allowances are granted at specified depreciation rates ranging from 20% to 40%.

Capital expenditure on buildings that are designated as industrial buildings, excluding the cost of the land, qualifies for an annual industrial building allowance of 5%. Commercial buildings constructed on or after 1 July 2001 qualify for a straight-line commercial building deduction of 5%. Wear-and-tear allowances (tax depreciation), calculated using the declining-balance method, are granted for plant and machinery at the following rates.

Class	Assets	Rate (%)
I	Computers and data handling equipment	40
II	Automobiles, buses and minibuses with a seating capacity of less than 30 passengers, goods vehicles designed to carry or pull loads of less than 7 tons, and construction and earth-moving equipment	35
III	Buses with a seating capacity of 30 or more passengers, goods vehicles designed to carry or pull loads of more than 7 tons, specialized trucks, tractors, trailers and trailer-mounted containers, and plant and machinery used in farming, manufacturing or mining operations	30
IV	Railroad cars, locomotives, equipment vessels, barges, tugs and similar water transportation equipment, aircraft, specialized public utility plant, equipment and machinery, office furniture, fixtures and equipment, and depreciable assets not included in another class	20

An initial allowance at a rate of 50% is allowed for certain types of plant and machinery. The rate of the allowance is increased to 75% for capital expenditure in areas outside Kampala, Entebbe, Jinja, Namanve and Njeru. Initial allowances are granted in the year the plant and machinery is placed in service. Industrial buildings, excluding approved commercial buildings, qualify for an initial allowance of 20% if their construction begins on or after 1 July 2000.

An asset may qualify for both the initial allowance and the annual depreciation deduction. Both allowances are claimed in the same year with respect to an asset. The amount of the initial allowance is subtracted from the depreciable cost of the asset.

**Relief for Losses.** Losses may be carried forward for an indefinite period of time to offset future profits.

In general, loss carrybacks are not allowed. However, for long-term construction contracts that result in a loss in the final year, a loss carryback for an unlimited number of years is allowed.

**Groups of Companies.** There are no provisions for filing consolidated returns or for relieving losses within a group.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax	18
Social security contributions to the National Social Security Fund (NSSF), on salaries; the contributions are not tax deductible; paid by Employer	10
Employee	5

## E. Foreign-Exchange Controls

The foreign-exchange market is now fully liberalized. A company can freely transfer foreign exchange into and out of Uganda without restriction. A company can prepare financial statements in foreign currency if it obtains approval from the tax authorities.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest %	Royalties %
Belgium	5/15 (a)	10	10
Denmark	10/15 (b)	10	10
India	10	10	10
Italy	15	15	10
Mauritius	10	10	10
Netherlands	15	10	10
Norway	10/15 (b)	10	10
South Africa	10/15 (b)	10	10
United Kingdom	15	15	15
Nontreaty countries	15	15	15

- (a) The 5% rate applies if the recipient owns at least 10% of the company paying the dividends. The 15% rate applies to other dividends.
- (b) The 10% rate applies if the recipient is a company resident in the other contracting state that owns at least 25% of the capital of the payer. The 15% rate applies to other dividends.

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*Because of possible tax changes and the rapidly changing economic and political situation in Ukraine, readers should obtain further and more detailed information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	15 (a)
Interest	15
Royalties	15
Freight	6
Advertising	20 (b)
Income from Discount Bonds	25 (c)
Insurance	0/3 (b)(d)
Other Ukrainian-Source Income	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

(a) See Section B.

(b) The tax on income from advertising services and the tax on insurance payments are not withheld from the amount payable (as with other types of income), but rather paid by the Ukrainian entity “on top,” that is, at its own expense. Consequently, the Ukrainian payer bears the economic burden of this tax. As a result, the tax on advertising services and the tax on insurance payments are technically not withholding taxes.

(c) The tax base is calculated as the difference between the nominal value of the discount bonds and the acquisition value (purchase price) for the bonds on the primary or secondary stock exchange.

(d) The 0% rate applies to insurance and reinsurance payments (except for reinsurance payments made through a reinsurance broker) made to nonresident insurers and reinsurers with a high ranking of their financial solvency as determined by the State Commission for Regulation of the Financial Services Markets of Ukraine. In all other cases, the 3% rate applies.

**B. Taxes on Corporate Income and Gains**

**Corporate Profit Tax.** Ukrainian enterprises are subject to tax on their worldwide income and gains. Ukrainian enterprises are enterprises incorporated under the law of Ukraine. Foreign enterprises are subject to tax on income derived from sources in Ukraine and profits earned through a “permanent representation” in Ukraine. The concept of “permanent representation” under Ukrainian domestic law is similar to that of “permanent establishment” under most double tax treaties, but it has broader application.

**Rates of Tax.** The standard tax rate is 25%. Other rates apply to profits derived from certain specified activities, such as insurance.

**Capital Gains.** Capital gains are included in taxable income and taxed at the regular corporate profit tax rates.

**Administration.** Taxpayers must report their taxable income on a quarterly basis. Taxable income is reported for the first quarter, half year, three quarters and whole year on a cumulative basis. In addition, a return for 11 months is required. The tax return for a quarter must be filed by the 40th day of the quarter following the reporting quarter. The return for 11 months must be filed within 20 days after the end of November. The annual return must be filed by the 40th day of the year following the reporting year. Tax is payable within 10 days after the filing deadline.

**Dividends.** Under the Corporate Profit Tax Law, a company distributing dividends to resident or nonresident shareholders must pay a 25% advance corporate profit tax on the amount of the dividends. The distributing company pays the above tax at or before the time it pays the dividend and bears the cost of the tax. The distributing company may credit the 25% advance corporate profit tax against its regular corporate profit tax liabilities.

Effective from 1 January 2007, an exemption from advance corporate profit tax on dividends applies to dividends received from the following:

- Taxpayers for which dividends received from residents account for over 90% of their income.
- Institutes of joint investment. However, for payments of dividends to institutes of joint investment, advance corporate profit tax is due under the general rule.

The new law described above provides a more beneficial regime for Ukrainian holdings and institutes of joint investments. However, several questions need to be resolved regarding the provisions of the new law. For example, the law does not specify which period should be considered to calculate the percentage of dividend income. Also, it is not clear whether “income” means taxable gross income or income for purposes of financial accounting.

Dividends distributed to nonresidents are also subject to withholding tax at a rate of 15%, unless an applicable double tax treaty provides otherwise.

Ukrainian entities do not include dividends received from other Ukrainian residents (corporate profit taxpayers) in their taxable income. Ukrainian entities include dividends received from foreign investments in their taxable profit.

**Foreign Tax Relief.** Ukrainian enterprises may credit foreign tax paid against Ukrainian tax imposed on the same income, up to the amount of such Ukrainian tax. The credit is granted only if the taxpayer submits a written confirmation from the tax authorities of the foreign country that certifies payment of the foreign tax and if Ukraine has entered into a double tax treaty with the relevant foreign country.

### **C. Determination of Taxable Profit**

**General.** Taxable profit is not based directly on accounting profit but is instead calculated as adjusted gross income, less gross expenses and depreciation, as prescribed in the law. Income received (accrued) in foreign currency is converted into local currency at the rate of the National Bank of Ukraine (NBU) as of the date of receipt (accrual) of such income.

In general, expenses incurred in connection with an enterprise’s business activities are deductible for corporate profit tax purposes. However, certain expenses, such as contractual penalties, are not deductible, and the deductibility of other expenses, such as repairs and promotional expenses, is subject to limitations. In addition, see Section E for restrictions on the deductibility of certain other expenses.

**Depreciation.** Depreciation is calculated in accordance with the declining-balance method. For purposes of tax depreciation, fixed

assets are divided into four groups. Fixed assets are assets that are designated for use for more than one year (long-term assets) and that have a value exceeding UAH 1,000 (approximately US\$200). The four groups are depreciated at the following rates.

Group	Assets	Quarterly Depreciation Rate Since 2004 (%) (a)	Quarterly Depreciation Rate Before 2004 (%) (b)
1	Buildings, constructions and their structural components; transmitting terminals (equipment for the telecommunication network); residential premises and their parts (flats and public facilities); and the value of capital improvements to land	2	1.25
2	Automobiles and their assemblies (spare parts); furniture; household electrical, optical, electromechanical devices and instruments; and other office equipment and facilities and accessories thereto	10	6.25
3	Fixed assets not included in Groups 1, 2 and 4	6	3.75
4	Computers, their software and related sensing and printing devices; other information technology systems; telephones (including cellular phones); microphones; and radios, the value of which exceeds the value of low-value items (assets with a value below UAH 1,000 [approximately US\$200])	15	15

(a) These rates apply to expenses incurred by the taxpayer after 1 January 2004 in connection with the acquisition or construction (production) of new fixed assets or improvement of such new fixed assets.

(b) These rates apply to expenses incurred by the taxpayer in connection with the acquisition, construction (production) or improvement of fixed assets before 1 January 2004.

Intangible assets are depreciated under the straight-line method for a period established by the taxpayer that may not exceed 10 years.

**Relief for Losses.** The Corporate Profit Tax Law technically allows the deducting of prior-year losses over an indefinite time period. However, since 2002, the Ukrainian parliament has imposed temporary restrictions on this general rule and cut off old losses. For example, under the 2007 Budget Law, losses generated before 1 January 2006 and not used in 2006 may not be



deducted in 2007. In fact, currently, a company may use its tax losses within only one reporting year.

It is possible that in the future taxpayers may be allowed to use losses that were not allowed to be used in 2007. However, at this time, it is not known if or when the loss limitations will be removed.

The law does not allow tax loss carrybacks.

**Groups of Companies.** The Ukrainian tax law does not provide for the grouping of different legal entities.

The Ukrainian law allows the offsetting of profits and losses among the branches of the same company. Under Ukrainian law, a branch is a subdivision of a company that does not have the status of legal entity and is located on the territory of other territorial community (a branch located on the territory of other territorial community means an office, other than the head office, located in a district [region or city/village]). Branches are normally treated as separate taxpayers. However, a Ukrainian legal entity may choose to pay consolidated tax.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT)	
Standard rate	20
Exports of goods and ancillary services	0
Excise duties	Various
Customs duties	Various
Pollution tax	Various
Taxes, royalties and rent payments with respect to natural resources	Various
Land tax	Various

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The Ukrainian currency is hryvnia (UAH). The current official exchange rate of the hryvnia against the U.S. dollar is approximately UAH 5.05 = US\$1; the retail exchange rate is approximately UAH 5.09 = US\$1. A wide variety of controls are imposed with respect to the use, circulation and transfer of foreign currency within Ukraine and abroad. These controls, which affect almost all international business transactions, include the following:

- In general, transactions between Ukrainian residents and cash settlements within Ukraine may not be carried out in foreign currency.
- All statutory accounting and tax reporting, as well as tax payments, must be in Ukrainian currency.
- Wages and salaries paid to Ukrainian citizens must be in Ukrainian currency.
- Ukrainian currency may be used to purchase foreign currency.
- Cash investments in Ukraine must be made through Ukrainian banks.
- Ukrainian enterprises must obtain an individual license (permission) from the NBU to engage in certain business transactions, including the opening of bank accounts abroad.

- Payments for services rendered by nonresidents, as well as cross-border lease and royalties payments, are subject to price-evaluation review if the total amount of the contract (or the total annual amount payable under several contracts for similar services between the same parties) exceeds €100,000 (or its equivalent in another foreign currency). The governmental informational-analytical center for monitoring foreign commodities markets conducts the price-evaluation reviews.

**Debt-to-Equity Ratios and Other Restrictions on the Deductibility of Interest.** No debt-to-equity rules are in effect in Ukraine. However, the law imposes a restriction on the deductibility of interest payable by Ukrainian companies with 50% or more foreign investment to their nonresident shareholders and parties related to such nonresidents. This measure essentially implies that, in a reporting period, such a Ukrainian company may deduct interest payable in an amount not exceeding the amount of interest income received plus 50% of its adjusted taxable profit for the relevant period, which is calculated in accordance with a special formula. The remaining interest may be carried forward without time limit, subject to the same 50% limitation.

**Payments to Residents of Offshore Locations.** Only 85% of the amount of payments in consideration for goods and services to residents of “offshore zones” is tax-deductible. The Cabinet of Ministers of Ukraine publishes the list of offshore zones. The current list includes more than 40 tax havens and countries with concessionary tax regimes.

**Transfer Pricing.** Transactions between related parties, as defined by the law, as well as transactions with nonresidents, are subject to transfer-pricing regulations. The regulations provide that the prices in transactions between such parties should be at an arm’s length level. Under the general rule, the contractual price is deemed to be an arm’s length price. The burden of proof that the contract price is not at an arm’s length rests on the tax authorities. The tax authorities may adjust taxpayer’s tax obligations as a result of the application of the arm’s length prices. Such decisions of the tax authorities may be challenged in the court. To reassess taxpayers’ liabilities based on the application of arm’s length prices, the tax authorities must apply to the court.

For VAT purposes, the arm’s length price is used as the tax base for all taxable transactions.

## **F. Treaty Withholding Tax Rates**

Ukraine honors the double tax treaties of the former USSR, except for treaties that have been superseded by new treaties concluded directly by Ukraine or renounced by the other party to the treaty. Ukraine is not a member of the Organization for Economic Cooperation and Development (OECD). As a result, the Ukrainian tax authorities may not follow commentary in the OECD model convention. The rates in the following table reflect the lower of the treaty rate and the rate under domestic tax law for dividends, interest and royalties paid from Ukraine to residents of treaty countries. Exceptions or conditions may apply, depending on the terms of the particular treaty.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Algeria	5/15 (d)	0/10 (e)	10
Armenia	5/15 (d)	0/10 (e)	0
Austria	5/10 (d)	0/2/5 (h)	0/5 (k)
Azerbaijan	10	0/10 (e)	10
Belarus	15	10	15
Belgium	5/15 (d)	0/2/10 (h)(aa)	0/10 (k)(aa)
Brazil	10/15 (d)(ee)	0/15 (ff)	15
Bulgaria	5/15 (d)	0/10 (e)	10
Canada	5/15 (d)	0/10 (e)	0/10 (f)
China (bb)	5/10 (d)	0/10 (e)	10
Croatia	5/10 (d)	0/10 (e)	10
Cyprus	0	0	0
Czech Republic	5/15 (d)	0/5 (e)	10
Denmark	5/15 (d)	0/10 (e)	0/10 (g)
Egypt	12	0/12 (e)	12
Estonia	5/15 (d)	0/10 (e)	10
Finland	0/5/15 (m)	0/5/10 (n)	0/5/10 (l)
France	0/5/15 (a)	0/2/10 (j)	0/10 (r)
Georgia	5/10 (d)	0/10 (e)(z)	10
Germany	5/10 (d)	0/2/5 (h)	0/5 (k)
Greece	5/10 (d)	0/10 (e)	10
Hungary	5/15 (d)	0/10 (e)(z)	5
India	10/15 (d)	0/10 (e)	10
Indonesia	10/15 (d)	0/10 (e)(z)	10
Iran	10	0/10 (e)	10
Israel	5/15 (d)	0/5/10 (dd)	10
Italy	5/15 (d)	0/10 (e)	7
Japan	15	0/10 (e)	0/10 (b)
Kazakhstan	5/15 (d)	0/10 (e)	10
Korea	5/15 (d)	0/5 (e)	5
Kuwait	5	0	10/15 (s)
Kyrgyzstan	5/15 (d)	0/10 (e)	10
Latvia	5/15 (d)	0/10 (e)	10
Lebanon	5/15 (d)	0/10 (e)	10
Lithuania	5/15 (d)	0/10 (e)	10
Macedonia	5/15 (d)	0/10 (e)	10
Malaysia	15	0/15 (e)	10/15 (c)
Moldova	5/15 (d)	0/10 (e)(z)	10
Mongolia	0	0	0
Netherlands	0/5/15 (i)	0/2/10 (j)	0/10 (k)
Norway	5/15 (d)	0/10 (e)	5/10 (x)
Poland	5/15 (d)(cc)	0/10 (e)	10
Portugal	10/15 (q)	0/10 (e)	10
Romania	10/15 (d)	0/10 (e)	10/15 (s)
Russian Federation	5/15 (o)	0/10 (e)	10
Slovak Republic	10	10	10
Slovenia	5/15 (d)	5	5/10 (x)
South Africa	5/15 (d)	0/10 (e)	10
Spain	15	0	0/5 (b)
Sweden	0/5/10 (d)(t)	0/10 (u)	0/10 (v)
Switzerland	5/15 (d)	0/10 (p)	0/10 (k)
Syria	10	0/10 (e)	15
Tajikistan	10	0/10 (e)	10
Thailand	10/15 (d)	0/10/15 (w)	15
Turkey	10/15 (d)	0/10 (e)	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Turkmenistan	10	0/10 (e)	10
United Arab Emirates	0/5/15 (y)	0/3 (e)	0/10 (k)
United Kingdom	5/10 (d)	0	0
United States	5/15 (d)	0	10
Uzbekistan	10	0/10 (e)	10
Vietnam	10	0/10 (e)	10
Yugoslavia	5/10 (d)	0/10 (e)	10
Nontreaty countries	15	15	15

- (a) The 0% rate applies to dividends paid to companies if they hold directly or indirectly at least 50% of the capital of the payer of the dividends and if either of the following additional conditions is satisfied: they have invested at least FF 5 million in the capital of the payer; or their investments in the payer are underwritten or insured by the state of France, its central bank, or any other person working on behalf of the state of France. The 5% rate applies to dividends paid to companies that own at least 20% of the capital of the payer. The 15% rate applies to other dividends.
- (b) The 0% rate applies to royalties paid for the use of, or the right to use, copyrights for literary, dramatic, musical or artistic works. The higher rate applies to other royalties.
- (c) The 10% rate applies to the following: payments for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulas or processes; payments for copyrights of scientific works; payments for the use of, or the right to use, industrial commercial or scientific equipment; and payments for industrial, commercial or scientific experience. The 15% rate applies to payments for the use of, or the right to use, cinematographic films, or tapes for radio or television broadcasting, and to payments for copyrights of literary or artistic works.
- (d) The lower rate applies to dividends paid to companies owning a minimum percentage of the capital of the payer (under the treaties, this percentage ranges from 10% to 50%). The higher rate applies to other dividends.
- (e) The 0% rate applies to interest paid to or by government institutions of the contracting states or to entities authorized by government institutions. The higher rate applies to other interest.
- (f) The 0% rate applies to payments for the use of, or the right to use, computer software. The 10% rate applies to other royalties.
- (g) The 0% rate applies to payments for the use of, or right to use, secret formulas or processes, or for information (know-how) concerning industrial, commercial or scientific experience. The 10% rate applies to other royalties.
- (h) The 0% rate applies to interest paid to the state or an agency owned or controlled by the state and to interest paid to a resident of a contracting state with respect to a loan or other debt claim or credit granted, guaranteed or insured by public entities owned or controlled by the state. The 2% rate applies to interest on loans from banks or financial institutions and to interest with respect to sales on credit of merchandise or services between enterprises or sales of industrial, commercial or scientific equipment. The higher rate applies to other interest.
- (i) The 0% rate applies to dividends paid to companies (other than partnerships) that hold directly at least 50% of the capital of the payer of the dividends and have made an investment in the capital of the payer of at least US\$300,000 or the equivalent in the currencies of the contracting states. The 0% rate also applies to dividends paid to companies whose investment in the capital of the payer is guaranteed or insured by government institutions or an agency or instrumentality owned or controlled by the government. The 5% rate applies to dividends paid to companies owning at least 20% of the payer. The 15% rate applies to other dividends.
- (j) The 0% rate applies to interest paid to the state or an agency owned or controlled by the state and to interest paid to a resident of a contracting state with respect to a loan or other debt claim or credit granted, guaranteed or insured by public entities owned or controlled by the state. The 2% rate applies to interest on loans from banks or financial institutions and to interest with respect to sales on credit of merchandise or services between enterprises or sales of industrial, commercial or scientific equipment. The higher rate applies to other interest.
- (k) The 0% rate applies to payments for the use of, or the right to use, copyrights of scientific works, patents, trademarks, designs or models, plans, and secret

formulas or processes, as well as to information concerning industrial, commercial or scientific experience. The higher rate applies to other royalties.

- (l) The 0% rate applies to royalties paid for the use of, or the right to use, computer software, patents, designs or models, or plans. The 5% rate applies to royalties paid for the use of, or right to use, secret formulas or processes, as well as for information (know-how) concerning industrial, commercial or scientific experience. The 10% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works including cinematographic films, and films or tapes for television or radio broadcasting, or trademarks.
- (m) The 0% rate applies to dividends paid to companies if they hold directly at least 50% of the capital of the payer and if either of the following additional conditions are satisfied: they have made an investment of at least US\$1 million in the capital of the payer; or the Finnish Guarantee Board has issued an investment guarantee for the capital invested. The 5% rate applies to dividends paid to companies owning at least 20% of the capital of the payer. The 15% rate applies to other dividends.
- (n) The 0% rate applies if the interest is paid to the State of Finland, or a local authority or a statutory body thereof, the Bank of Finland, the Finnish Fund for Industrial Co-operation Ltd (FINNFUND) or the Finnish Export Credit Ltd or any similar institution. The 0% rate also applies to interest paid to a resident of Finland on a loan guaranteed by any of the bodies mentioned in the preceding sentence or by the Finnish Guarantee Board and paid to a resident of Finland. The 5% rate applies to interest related to commercial credit. The 10% rate applies to other interest.
- (o) The 5% rate applies to dividends paid to companies that have invested at least US\$50,000 in the capital of the payer or an equivalent amount in the currencies of the contracting states. The 15% rate applies to other dividends.
- (p) The 0% rate applies to the following types of interest: interest paid to government institutions; interest on loans granted by banks; and interest paid with respect to sales on credit of merchandise, or industrial, commercial or scientific equipment. The 10% rate applies to other interest.
- (q) The 10% rate applies to dividends paid to the beneficial owner if, for an uninterrupted period of two years before the payment of the dividend, the beneficial owner owned directly at least 25% of the capital stock of the company paying the dividends. The higher rate applies to other interest.
- (r) The 0% rate applies to payments for the use of, or the concession of the right to use, pieces of software, patents, brand names or trademarks, designs or models, plans, formulas, or secret processes, as well as for information related to obtained experience (know-how) in the industrial, commercial or scientific domain. The 10% rate applies to other royalties.
- (s) The 10% rate applies to royalties paid for the use of or the right to use, patents, trademarks, designs or models, secret formulas or processes, as well as for information concerning industrial, commercial or scientific experience. The 15% rate applies to other royalties.
- (t) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 25% of the voting power of the payer of the dividends and if at least 50% of the voting power of the company that is the beneficial owner of the dividends is held by residents of the beneficial owner's contracting state.
- (u) The 0% rate applies to interest paid on loans guaranteed or insured by a government, as well as to interest with respect to indebtedness arising on sales on credit by enterprises of merchandise or industrial, commercial or scientific equipment to an enterprise of another contracting state, unless the sale or indebtedness is between related persons. The 10% rate applies to other interest payments.
- (v) The 0% rate applies to royalties paid for patents concerning industrial and manufacturing know-how or processes, agriculture, pharmaceuticals, computers, software, building constructions, secret formulas or processes, as well as for information concerning industrial, commercial or scientific experience. The 10% rate applies to other royalties.
- (w) The 0% rate applies to interest derived by the government, a political subdivision or a local authority, central bank of a contracting state or other financial institution established and owned by the government to promote trade and investment, as well as to interest paid to residents of a contracting state with respect to debt-claims guaranteed or insured by the government, a local authority thereof, the central bank or other financial institution established and owned by the government to promote trade and investment. The 10% rate applies to interest paid on loans granted by banks or other financial institutions, including investment banks, savings banks and insurance companies. The 15% rate applies to other interest payments.

- (x) The 5% rate applies to royalties paid for the use of, or the right to use, patents, plans, secret formulas or processes, as well as for information (know-how) concerning industrial, commercial or scientific experience. The 10% rate applies to other royalties.
- (y) The 0% rate applies to dividends paid to the government, a political subdivision or local authority, central bank or other state financial institution. The 5% rate applies to dividends paid to companies owning at least 10% of the capital of the payer.
- (z) The 0% rate also applies to interest paid with respect to loans made, guaranteed or insured on behalf of the state by its authorized organ or other debt-claims or credits guaranteed or insured on behalf of the state by its authorized organ.
- (aa) A discrepancy exists between the Ukrainian and English texts of the Belgium treaty with respect to the withholding tax rates for interest and royalties. In the Ukrainian version, the highest treaty rate is 5%, while in the English version, it is 10%. The English version prevails in accordance with Paragraph (e) of the protocol to the treaty.
- (bb) The treaty does not apply to Hong Kong Special Administrative Region.
- (cc) A discrepancy exists between the Ukrainian and the Polish versions of the treaty with respect to dividends. In the Polish version, the rates applicable to dividends are 5% and 15%. In the Ukrainian version, they are 5% and 25%, respectively.
- (dd) The 0% rate applies to interest paid on loans granted by the government of Israel, including its political subdivisions and local authorities, the central bank or financial instrumentalities of that government. The 5% rate applies to interest paid on loans granted by banks. The 10% rate applies to all other interest payments.
- (ee) If a resident of Brazil has a permanent establishment in Ukraine, such permanent establishment may be subject to a withholding tax under the law of Ukraine. However, this tax may not exceed 10% of the amount of the profits of that permanent establishment after payment of the corporate tax on the profits.
- (ff) Interest arising in Ukraine and paid to the government of Brazil, political subdivisions thereof or agencies (including financial institutions) wholly owned by that government or a political subdivision is exempt from tax in Ukraine, unless the rule mentioned in the following sentence applies. Interest on securities, bonds or debentures issued by the government of Ukraine, political subdivisions thereof or agencies (including financial institutions) wholly owned by that government is taxable only in Ukraine.

Ukraine has ratified double tax treaties with Cuba and Mongolia, but these treaties are pending. Ukraine has signed a double tax treaty with Luxembourg, but this treaty has not yet been ratified. Ukraine has negotiated double tax treaties with Jordan, Malta, Morocco, Pakistan and Singapore, but these treaties have not yet been signed. Ukraine is negotiating double tax treaties with Guinea and Tunisia.

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## UNITED ARAB EMIRATES

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**A. At a Glance**

Corporate Income Tax Rate (%)	0*
Capital Gains Tax Rate (%)	0*
Branch Tax Rate (%)	0*
Withholding Tax (%)	0*

\* No taxes are imposed by the federal government of the United Arab Emirates, but see Section B for information on corporate taxes in the individual emirates.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** The United Arab Emirates (UAE) is a federation consisting of seven emirates. The federal government of the UAE has not promulgated any tax laws. Most of the individual emirates have issued corporate tax decrees, but, in practice, taxes are imposed only on foreign oil and gas production activities at rates set forth in private concession agreements entered into by the foreign oil company and the Ruler of the Emirate, and on branches of foreign banks at rates either in a specific tax decree or in an agreement with the Rulers of the Emirates in which the branches operate. Withholding taxes are not imposed.

**Tax Incentives.** Several of the emirates have free zones, which offer tax and business incentives aimed at making the UAE a global business and commercial center. The incentives usually include tax exemptions for a guaranteed period, 100% foreign ownership, no customs duty within the free zone and “one-stop shop” administrative services.

## C. Foreign-Exchange Controls

Neither the federal government of the UAE nor the individual emirates impose foreign-exchange controls.

## D. Tax Treaties

The UAE has entered into tax treaties with several countries, including Algeria, Armenia, Austria, Belarus, Belgium, Canada, China, the Czech Republic, Egypt, Finland, France, Germany, India, Indonesia, Italy, Korea, Lebanon, Luxembourg, Malaysia, Mongolia, Morocco, Mozambique, New Zealand, Pakistan, Philippines, Poland, Romania, Singapore, Sri Lanka, Sudan, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, the United States and Yemen. A tax treaty with the Netherlands is expected to enter into force on 1 January 2008. Treaties have been concluded with Bosnia-Herzegovina, Malta, Mauritius, Seychelles and Spain, but they have not been formally ratified.

# UNITED KINGDOM

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)(b)
Capital Gains Tax Rate (%)	30 (c)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	0
Interest	20 (d)
Royalties from Patents, Know-how, etc.	22 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1
Carryforward	Unlimited

- (a) Effective from 1 April 2008, the main rate of corporation tax will become 28%. However, the main rate for ring-fence profits (that is, profits from oil extraction and oil rights in the United Kingdom and the U.K. continental shelf) will remain at 30%. The small companies' rate of corporation tax was increased to 20%, effective from April 2007 and will be increased to 21%, effective from April 2008, and to 22%, effective from April 2009.
- (b) The "small" companies' rate of 19% applies in certain circumstances if taxable profits are below £300,000. This benefit is phased out for taxable profits from £300,000 to £1.5 million. These limits are reduced if associated companies exist.
- (c) Capital gains are subject to tax at the normal corporation tax rate. See Section B for details concerning the taxation of capital gains derived by nonresidents.
- (d) Applicable to payments to nonresidents and noncorporate residents.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Companies that are resident in the United Kingdom are subject to corporation tax on their worldwide profits. Tax is imposed on the total amount of income earned from all sources in the company's accounting period, including any chargeable capital gains.



Nonresident companies are subject to U.K. corporation tax only if they carry on a trade in the United Kingdom through a permanent establishment. A permanent establishment arises either from a fixed place of business in the United Kingdom through which the nonresident company carries on its business, or from an agent exercising authority to do business in the United Kingdom on behalf of the nonresident company. The amount of profit attributable to a permanent establishment is computed in accordance with the arm's length principle.

A company is resident in the United Kingdom if it is incorporated in the United Kingdom or if the central management and control of the company is exercised there. However, companies regarded as resident under domestic law, but as nonresident under the tie breaker clause of a double tax treaty, are regarded as nonresident for all tax purposes.

**Rates of Corporation Tax.** The tax rate for the 2007 financial year (the year beginning 1 April 2007) is 30%. For the 2008 financial year, the main rate of corporation tax will be 28% for companies with profits above £1,500,000. The rate will remain at 30% for companies with ring-fence profits (that is, profits from oil extraction and oil rights in the United Kingdom and the U.K. continental shelf). If an accounting period does not coincide with the financial year, the profits for the accounting period are time-apportioned and the appropriate rate applied to each part. A company may claim the small companies' rate of corporation tax, which is 20%, if its taxable profits for an accounting period are below £300,000. The effective marginal rate for companies with profits between £300,000 and £1,500,000 is currently 32.5%. These limits are divided by one plus the number of associates if a company has associated companies (subsidiaries or fellow subsidiaries), regardless of whether they are within or outside the United Kingdom.

The 0% rate, which applied to companies with taxable profits of less than £10,000, is no longer available, effective from 1 April 2007.

**Proposed Changes to the Taxation of Foreign Profits.** Changes to the tax treatment of the foreign profits of companies are expected to follow a consultation document that closed in September 2007 (that is, the period for comments regarding the consultation document ended in September 2007). This document included the following proposals:

- A broad-based dividend exemption for shareholdings of more than 10%.
- A change to the tax treatment of portfolio dividends.
- "Controlled company" rules for passive/mobile income. Under these rules, U.K. parent companies would be taxed on specifically defined mobile income that is effectively within the control and disposition of the U.K. parent company. For the passive income category of mobile income, the rules would apply regardless of whether this income arises in U.K. or foreign subsidiaries.
- Interest deductibility restrictions.

This consultation is still in its early stages and proposals have not yet been sent to parliament.

**Capital Gains.** Capital gains on chargeable assets are taxed at the normal corporation tax rate. For U.K. tax purposes, a capital gain is usually the excess of the sale proceeds over the original cost plus any subsequent qualifying capital expenditure incurred on the chargeable asset being disposed of. If chargeable assets acquired before 31 March 1982 are disposed of, only the portion of the gain after that date is usually taxable. An allowance is available for inflation; the amount of the reduction is based on the increase in the retail price index. The inflation allowance may be used only to eliminate a gain; it may not be used to create an allowable loss.

Capital gains tax is not generally levied on nonresidents; consequently, no tax is levied on a gain on the sale of shares in a U.K. subsidiary by the foreign nonresident parent company. However, gains on the sale of assets situated in and used in a trade carried on by a permanent establishment in the United Kingdom are subject to tax.

Special provisions permit the deferral of the capital gains charge on qualifying business assets if the sales proceeds are reinvested. There are numerous other special rules relating to capital gains.

Capital losses may be offset against capital gains of the same accounting period or carried forward indefinitely, but may not be carried back. Capital losses may not be used to reduce trading profits. If an asset is sold outside of a group of companies, the seller and another group company may jointly elect to treat the sale as being made by the other group company. As a result, the gain or loss is effectively transferred to that other group company.

**Administration.** Companies may select any accounting period.

Tax returns, accounts and computations must be filed within 12 months after the end of the accounting period.

Large companies must make quarterly installment payments of their corporation tax. The first installment is due six months and thirteen days after the beginning of the accounting period, and the last installment is due three months and fourteen days after the end of the accounting period. These payments are based on the estimated tax liability for the current year. Fewer payments may be required for shorter accounting periods.

All other companies must pay estimates of their corporation tax liability within nine months after the end of their accounting period.

Companies not complying with the filing and payment deadlines described above are subject to interest and penalties.

A self-assessment system requires companies to correctly assess their tax liabilities or face significant penalties. In addition, the tax authority (Her Majesty's Revenue & Customs, or HMRC) has extensive investigative powers.

*Advance Agreements Unit.* Effective from 9 October 2007, significant inward investors can apply to the Advance Agreements Unit (AAU) for a range of services, including the following:

- Rulings that can be relied on by businesses, consistent with administrative law (that is, consistent with the law that sets out the rights and obligations of taxpayers and HMRC), with respect

to all taxes if uncertainty exists with respect to the application of existing law to the specific transaction;

- A “one-stop shop” to coordinate responses from different parts of HMRC, depending on the taxes and duties involved;
- A fast track towards agreement if time is of the essence; and
- Help for inward investors who need advice on U.K. taxes and systems.

**Dividends.** Dividends paid by U.K. resident companies are not subject to withholding tax. Dividends received from U.K. resident companies are not subject to further U.K. taxation in the hands of the U.K. recipient company.

U.K. resident shareholders other than companies are subject to income tax on the distribution received plus a deemed tax credit. The deemed tax credit attaching to dividends is equal to 10/90 of the net dividend. Under several of the U.K.’s double tax treaties, a foreign shareholder in a U.K. company may claim payment of part or all of this deemed tax credit that would have been available to a U.K. individual. However, in most cases, the benefit is eliminated or reduced to a negligible amount.

**Foreign Tax Relief.** Foreign direct tax on income and gains of a U.K. resident company may be credited against the corporation tax on the same profits. The foreign tax relief cannot exceed the U.K. corporation tax charged on the same profits.

If a company receives a dividend from a foreign company in which it has at least 10% of the voting power, it may also obtain relief for the underlying foreign tax on the profits out of which the dividend is paid.

Surplus foreign tax may be carried forward indefinitely, or back for up to three years, to offset U.K. tax on income from the same source. The law also provides for limited onshore pooling of dividend income, with all foreign tax on the pooled income eligible for offset against U.K. tax on the pooled income. However, dividends paid by controlled foreign companies are not included in the pool, and the underlying tax attributable to any overseas dividend is restricted to the mainstream corporation tax rate (currently, 30%).

### **C. Determination of Trading Income**

**General.** The assessment is based on financial statements prepared in accordance with generally accepted accounting principles (GAAP), subject to certain adjustments and provisions.

Expenses must be incurred wholly and exclusively for the purposes of the trade. However, no deduction is allowed for entertainment expenses, except for the entertaining of company employees (in certain circumstances).

**Corporate and Government Debt and Foreign-Exchange Differences.** The rules under the corporate and government debt regime are designed to allow the tax treatment of interest, discounts and premiums on debt instruments to follow the accounting treatment in most circumstances. However, the regime includes many anti-abuse measures.

Most foreign-exchange differences are taxable or relievable in accordance with the proper accounting treatment. Specific rules apply to foreign-exchange differences arising on loans with respect to a hedging function.

**Inventory.** Inventory is normally valued at the lower of cost or net realizable value. Cost must be determined on a first-in, first-out (FIFO) basis; the last-in, first-out (LIFO) basis is not acceptable under U.K. GAAP.

**Provisions.** HMRC allows provisions made in accordance with U.K. GAAP to be deductible for tax purposes unless specific legislation provides to the contrary. However, no expenditure may be relieved more than once.

**Leased Assets.** Changes have been made to the taxation of certain leases of plant and machinery, effective from 1 April 2006. If leases of plant or machinery function essentially as financing transactions (long-funding leases), the new regime taxes them as such. Under the new regime, the following rules apply:

- The lessor includes only the finance element of the rentals arising under the lease as income; and
- The lessee deducts only the finance element of the rentals payable over the life of the lease and is entitled to capital allowances.

The new regime applies to finance leases and certain operating leases. With the exception of some hire-purchase transactions, leases of less than five years will not be affected by the reform.

#### **Tax Depreciation (Capital Allowances)**

*Plant and Machinery.* Until 1 April 2008, a depreciation allowance of 25% a year on a declining-balance basis is available on most plant and machinery expenditure, including automobiles. There are, however, restrictions imposed on allowances for cars costing over £12,000 when new. Assets purchased on or after 26 November 1996 with a useful life of 25 years or more (long-life assets) are depreciated using the declining-balance method at an annual rate of 6% per year.

Small and medium-sized businesses may claim first-year capital allowances of 50% and 40%, respectively, for most types of plant and machinery purchased on or after 1 July 1998. Long-life assets do not qualify for first-year capital allowances.

Effective from 1 April 2008, the following changes will be introduced to the capital allowances regime:

- The main rate of capital allowances on the general pool of plant and machinery will be reduced from 25% to 20%;
- The rate of capital allowances on the pool of long-life assets, which consists of assets with a useful life of more than 25 years, will be increased from 6% to 10%; and
- Fixtures that are integral to a building will be classified separately and included in a pool with a 10% rate of capital allowances.

The new rules described above apply to all assets, regardless of when they are acquired. However, transitional rules apply.

Also, effective from 1 April 2008, the first-year allowance for small and medium-sized businesses will be replaced with a new annual investment allowance (AIA), which is an annual 100%

allowance for the first £50,000 of investment in plant and machinery (other than cars). The AIA will be available to all businesses, regardless of size and legal form. One annual £50,000 allowance will be available to each individual business or company group.

*Energy-Saving Assets.* A 100% depreciation allowance is available to businesses for expenditure on low-emission cars, gas-refueling infrastructure, water technologies and energy-saving technologies. Effective from 1 April 2008, new rules will be introduced to enable companies to surrender losses derived from enhanced capital allowances (for expenditure on certain environmentally beneficial types of plant and machinery) in return for a cash payment.

*Renovation of Business Premises in Disadvantaged Areas.* An initial allowance of 100% is available for companies and individuals who own or lease property located in a designated disadvantaged area and who incur capital costs on the renovation or conversion of such property.

*Industrial Buildings.* Until 1 April 2008, beginning when industrial buildings are brought into use, they may be depreciated using the straight-line method at an annual rate of 4% of cost. Depreciation allowances may also be available on existing buildings that are acquired. In designated Enterprise Zones (development areas), an initial allowance of 100% is available for most buildings and integral plant and machinery. However, very few Enterprise Zones remain in the United Kingdom.

Beginning on 1 April 2008, allowances for industrial buildings and agricultural buildings will be gradually withdrawn, with the effective rate of the allowance decreasing to 3% from 1 April 2008, to 2% from 1 April 2009, to 1% from 1 April 2010, and a full withdrawal taking effect on 1 April 2011.

*Commercial Buildings.* Commercial buildings qualify for capital allowances only if they are located in Enterprise Zones.

*General.* Capital allowances are available for expenditures on agricultural buildings, mineral extraction and hotels. Allowances are usually subject to recapture on the disposal of an asset on which capital allowances have been claimed.

**Relief for Trading Losses.** Trading losses may be used to relieve other income and chargeable gains of the year in which the loss was incurred and of the preceding year, provided the same trade was then carried on. Losses may also be carried forward, without time limit, for relief against future income from the same trade. A trading loss in one company may be offset against profits (including capital gains) for the same period of another company within a 75%-owned group of companies (as defined). A company that ceases trading may carry back trading losses and offset them against profits of the previous 36 months.

**Groups of Companies.** U.K. law does not provide for tax consolidation. However, a trading loss incurred by one company within a 75%-owned group of companies may be grouped with profits for the same period realized by another member of the group. Similar provisions apply in a consortium situation; for this purpose, a

U.K. resident company is owned by a consortium if 75% or more of its ordinary share capital is owned by other U.K. resident companies, none of which individually has a holding of less than 5%. However, the consortium-owned company must not be a 75%-owned subsidiary of any company.

In a 75%-worldwide group, the transfer of assets between group companies does not result in a capital gain if the companies involved are subject to U.K. corporation tax. This rule applies regardless of the residence status of the companies or their shareholders. The transferee company assumes the transferor's original cost of the asset plus subsequent qualifying expenditure and indexation. However, under an antiavoidance provision, if the transferee company leaves the group within six years of the date of the transfer of the asset, that company is deemed to have disposed of the asset at market value immediately after the start of the accounting period of departure or, if later, the original date of the transfer.

Interest payments on "short loans" (loans with a duration that cannot exceed 364 days) may be made without the need to account for withholding tax. All interest payments by U.K.-resident companies may be paid without the imposition of withholding tax if the paying company reasonably believes that the interest is subject to U.K. corporation tax in the hands of the recipient.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on any supply of goods or services, other than an exempt supply, made in the United Kingdom by a taxable person in the course of business (taxable if annual supplies exceed £64,000)	0/5/17.5
Stamp duty; imposed on transfers of shares, securities and interests in certain partnerships; duty charged on the stampable consideration	0.5
Stamp duty land tax (SDLT); imposed on transfers of land and buildings and certain partnership transactions; tax is charged on the final consideration, but this may be replaced by market value in certain circumstances	
Residential property	
Up to £125,000	0
£125,001 to £250,000	1
£250,001 to £500,000	3
More than £500,000	4
Nonresidential or mixed-use property	
Up to £150,000	0
£150,001 to £250,000	1
£250,001 to £500,000	3
More than £500,000	4
Social security contributions, on employees' salaries and wages; payable on weekly wages by	
Employer; imposed on employee's weekly wages exceeding £100	12.8

Nature of Tax	Rate (%)
Employee; imposed on employees earning weekly wages of £100 or more	
On first £100	0
On next £570	11
On balance of weekly wage	1

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Foreign-exchange regulations were suspended in 1979 and subsequently abolished. No restrictions are imposed on inward or outward investments. The transfer of profits and dividends, loan principal and interest, royalties and fees is unlimited. Nonresidents may repatriate capital, together with any accrued capital gains or retained earnings, at any time, subject to company law or tax considerations.

**Antiavoidance Legislation.** The U.K. tax law contains several anti-avoidance provisions, which include the substitution of an arm's length price for intercompany transactions (including intercompany debt) with U.K. or foreign affiliates, the levy of an exit charge on companies transferring a trade or their tax residence from the United Kingdom and the recharacterization of income for certain transactions in securities and real property. These and other antiavoidance provisions generally apply if the transaction is not carried out for bona fide commercial reasons. In general, advance clearance from the HMRC can only be obtained under certain specified provisions of the legislation, including the provision on arm's length pricing. In practice, rulings may be granted informally if the legislative provisions are unclear.

HMRC has recently focused on so-called "artificial tax planning" and has sought to blur the historic distinction between evasion and avoidance. It has introduced a new concept, known as "abusive tax avoidance." It is difficult to define this term. Consequently, businesses need to take a cautious approach to the implementation of business decisions.

The 2004 Finance Act introduced a system requiring the disclosure of certain transactions and arrangements to HMRC. The 2006 Finance Act significantly expanded the scope of these measures. As a direct result of the disclosure regime, tax-planning schemes are frequently disclosed in advance to HMRC.

**Transfer Pricing.** U.K. tax law contains measures that substitute an arm's length price for certain intercompany transactions with U.K. or foreign affiliates. Companies are required to prepare their tax returns in accordance with the arm's length principle, and retain adequate records or other documentation to support their compliance with such principle, or otherwise suffer substantial penalties. These rules have other far-reaching consequences, and taxpayers should seek specific advice concerning their circumstances.

Companies that were dormant as of 31 March 2004 and remain dormant are exempt from the transfer-pricing rules. Small companies are exempt from the rules with respect to transactions with persons in qualifying territories (broadly, the United Kingdom and those countries with which the United Kingdom has entered into a double tax treaty containing a nondiscrimination article).

Medium-sized companies are similarly exempt, but they are potentially subject to the issuance of a transfer-pricing notice by the HMRC. If both parties to a transaction are subject to U.K. corporation tax, and one is required to increase its taxable profits in accordance with the arm's length principle, the other is usually allowed to decrease its taxable profits through a corresponding adjustment.

Persons collectively controlling a business who have acted together with respect to the financing arrangements for the business are subject to the U.K. transfer-pricing regime.

**Controlled Foreign Companies.** Resident companies that hold a 25% or greater interest in a controlled foreign company (CFC) may be taxed on their shares of the profits (excluding capital gains) of the CFC. The CFC legislation applies if a nonresident company is controlled by persons resident in the United Kingdom, and is subject to a "lower level of taxation." A nonresident company is considered to be controlled by U.K. residents if U.K. residents hold a greater than 50% interest in the company or if U.K. residents hold a 40% or greater interest in the company and a nonresident holds an interest of at least 40%, but not greater than 55%, in the company. A company is subject to a lower level of taxation if the tax paid in its country of residence is less than three-quarters of the corresponding U.K. tax that would have been payable had it been resident in the United Kingdom. The CFC legislation does not apply if one of the exemptions in the legislation is satisfied. These exemptions include the following:

- The CFC's profits are less than £50,000 for a 12-month period;
- The CFC carries out certain exempt activities;
- The CFC follows an "acceptable distribution policy" by remitting sufficient dividends to the United Kingdom;
- The CFC is resident in an approved territory, 90% of its income is considered to be "local source" (as defined) and certain antiabuse conditions are met; and
- 35% of the voting shares in the CFC are listed and traded on a recognized stock exchange.

A CFC is also excluded from the legislation if it engages in activities that fulfill both of the following "motive" criteria:

- The primary purpose of the CFC's activities is not to reduce U.K. tax; and
- The diversion of profits from the United Kingdom is not the underlying reason for the CFC's existence.

U.K. companies are required to include amounts chargeable under the CFC legislation in their tax returns.

In the *Cadbury Schweppes* case, the European Court of Justice (ECJ) held that U.K. CFC rules, in general terms, conform with the European Community (EC) Treaty, but only to the extent that they apply to "wholly artificial arrangements." However, it is likely that the existing U.K. CFC rules, in certain cases, apply to arrangements that are not "wholly artificial" and to this extent will contravene the EC Treaty. Consequently, it is likely that many companies that will be the subject of a CFC charge under U.K. domestic law would not be subject to such charge if the ECJ's test is applied. In view of this uncertainty, further legislation is expected in the near future.



As indicated in *Proposed Changes to the Taxation of Foreign Profits* in Section B, the CFC rules are currently under review by the government. However, this review is still in its early stages.

**Dual-Resident Companies.** A dual-resident company that is not a trading company loses the right to surrender its losses to fellow group members and is prevented from enjoying certain other reliefs. These rules effectively prevent dual-resident investment companies from obtaining a double deduction for interest costs in both countries of residence.

**Debt-to-Equity Ratios.** The U.K.'s transfer-pricing measures apply to the provision of finance (as well as to trading income and expenses). As a result, companies are required to self assess their tax liability on financing transactions using the arm's length principle. Consequently, HMRC may challenge interest deductions on the grounds that, based on all of the circumstances, the loan would not have been made at all, or that the amount loaned or the interest rate would have been less, if the lender was an unrelated third party acting at arm's length.

**Impact of the European Court of Justice Decisions.** The U.K. tax environment does not operate in isolation. For example, it is currently subject to significant external influence in the form of decisions rendered by the European Court of Justice (ECJ). These decisions have held that many U.K. domestic tax measures are contrary to European Fundamental Freedoms. The recent cases of *Marks and Spencer v Halsey*, *Test Claimants in the Franked Investment Income Group Litigation* and *Cadbury Schweppes* (see *Controlled Foreign Companies* above) are likely to have a significant influence on the future of international tax planning in the United Kingdom.

At this stage, it is impossible to definitively reach a conclusion on the ultimate impact of the ECJ decisions, because, among other reasons, the cases are likely to continue for years. An ECJ decision does not necessarily lead to law changes in the United Kingdom. However, because these cases have held that many fundamental aspects of the U.K. domestic law are contrary to EC law, it is very likely that they will lead a wholesale overhaul of the U.K. tax system in the near future.

## F. Treaty Withholding Tax Rates

The rates in the table below reflect the lower of the treaty rate and the rate under domestic tax law. The table is for general guidance only.

Residence of Recipient	Payments by U.K. Companies of		
	Dividends (a)(b)	Interest %	Royalties %
Antigua and Barbuda	(2)	20	0
Argentina	(2)	0/12 (l)	3/5/10/15 (m)
Australia	(2)	10	5
Austria	(1)	0	0 (b)
Azerbaijan	(2)	0/10	5/10 (n)
Bangladesh	(2)	7.5/10 (o)	10
Barbados	(1)	15	0
Belarus	(2)	0	0
Belgium	(4)	15 (b)	0

Residence of Recipient	Payments by U.K. Companies of		
	Dividends (a)(b)	Interest %	Royalties %
Belize	(1)	20	0
Bolivia	(2)	0/15	15
Bosnia-Herzegovina	(1)	10	10
Botswana	(1)	0/10	10
Brunei	(1)	20	0
Bulgaria	(2)	0	0
Canada	(4)	10	0/10 (d)
Chile	(4)	5/15 (f)	5/10 (j)
China	(2)	0/10	7/10 (n)
Côte d'Ivoire	(2)	0/15	10
Croatia	(1)	10	10
Cyprus	(1)	10	0/5 (g)
Czech Republic	(2)	0	0/10 (b)(h)
Denmark	(2)	0 (c)	0 (c)
Egypt	(2)	15	15
Estonia	(2)	0/10 (b)	5/10 (b)(j)
Falkland Islands	(2)	0	0
Fiji	(1)	10	0/15 (n)
Finland	(2)	0	0
France	(1)	0	0
Gambia	(1)	0/15	12.5
Georgia	(2)	0	0
Germany	(2)	0	0
Ghana	(2)	0/12.5	12.5
Greece	(2)	0	0
Grenada	(2)	20	0
Guernsey	(2)	20	22
Guyana	(2)	0/15	10/22 (r)
Hungary	(2)	0	0
Iceland	(1)	0	0
India	(3)	0/10/15 (o)	10/15 (j)
Indonesia	(1)	0/10 (o)	10/15 (j)
Ireland	(2)	0	0
Isle of Man	(2)	20	22
Israel	(2)	15	0
Italy	(4)	0/10 (b)	8 (b)
Jamaica	(1)	12.5	10
Japan	(1)	0/10	0/10
Jersey	(2)	20	22
Jordan	(2)	0/10	10
Kazakhstan	(2)	0/10	10
Kenya	(1)	15	15
Kiribati	(1)	20	0
Korea	(2)	0/10	2/10 (i)
Kuwait	(2)	0	10
Latvia	(2)	0/10 (b)	0/5/10 (b)(j)
Lesotho	(2)	0/10	10
Lithuania	(1)	0/10	5/10 (j)
Luxembourg	(4)	0	5 (b)
Macedonia	(1)	10	10
Malawi	(1)	0/20 (p)	0/22 (p)
Malaysia	(1)	0/10	8
Malta	(3)	0/10 (b)	10 (b)
Mauritius	(1)	0/20 (o)	15
Mexico	(2)	5/10/15	10

Residence of Recipient	Payments by U.K. Companies of		
	Dividends (a)(b)	Interest %	Royalties %
Mongolia	(2)	7/10 (o)	5
Montenegro	(1)	10	10
Montserrat	(2)	20	0
Morocco	(2)	0/10	10
Myanmar	(2)	20	0/22 (s)
Namibia	(2)	20	0/5/22 (s)(t)
Netherlands	(4) (c)	0	0
New Zealand	(3)	0/10	10
Nigeria	(2)	0/12.5	12.5
Norway	(2) (c)	0	0
Oman	(2)	0	0
Pakistan	(2)	0/15	12.5
Papua New Guinea	(2)	0/10	10
Philippines	(1)	10/15 (q)	15/25 (r)
Poland	(1)	0/5	0/5 (b)
Portugal	(2)	10 (b)	5 (b)
Romania	(1)	10	10/15 (n)
Russian Federation	(2)	0	0
St. Kitts and Nevis	(2)	20	0
Serbia	(1)	10	10
Sierra Leone	(2)	20	0
Singapore	(2)	0/10	10
Slovak Republic	(2)	0	0/10 (b)(h)
Slovenia	(1)	10 (b)	10 (b)
Solomon Islands	(1)	20	0
South Africa	(2)	0	0
Spain	(1)	12 (b)	10 (b)
Sri Lanka	(2)	0/10 (o)	0/10 (n)
Sudan	(1)	15	10
Swaziland	(2)	20	0
Sweden	(4)	0	0
Switzerland	(4)	0	0
Taiwan	(2)	0/10	10
Tajikistan	(2)	0	0
Thailand	(1)	10/25 (o)	5/15 (n)
Trinidad and Tobago	(1)	10	0/10 (n)
Tunisia	(2)	10/12 (o)	15
Turkey	(2)	0/15	10
Turkmenistan	(2)	0	0
Tuvalu	(1)	20	0
Uganda	(2)	0/15	15
Ukraine	(2)	0	0
United States	(2)	0/15	0
Uzbekistan	(2)	0/5	5
Venezuela	(2)	0/5 (o)	5/7 (k)
Vietnam	(2)	0/10	10
Zambia	(1)	10	10
Zimbabwe	(1)	0/10	10
Nontreaty countries	– (e)	20	22

- (a) Under U.K. domestic law, withholding tax is not imposed on dividends. As explained in Section B, under existing law, a U.K. resident individual receiving a dividend obtains a tax credit of 10/90 of the dividend; this satisfies his or her basic rate income tax liability on the grossed up amount. The United Kingdom's double tax treaties fall into the following four general categories concerning dividends:

- (1) Treaties that give no tax credit to companies resident in the other state possessing more than a portfolio holding of the company paying the dividend (usually more than 10% of the voting power), but give a full credit to other shareholders resident in the other state, subject to a reduction based on the total of the dividend and the tax credit.
- (2) Treaties that give no tax credit to residents of the other state.
- (3) Treaties that give no tax credit to corporations, but give a full credit to other shareholders resident in the other state, subject to a reduction of 15% of the total of the dividend and the tax credit.
- (4) Treaties that give the following to residents of the other state:
  - (i) A half tax credit to companies possessing 10% (20% for Chile) or more of the voting power of the company paying the dividend, subject to a reduction of 5% (10% for Canada and Norway) of the total of the dividend and credit.
  - (ii) A full credit to other shareholders, subject to a reduction of 15% (20% for Belgium) of the total of the dividend and the tax credit. However, effective from 6 April 1999, the tax credit available to shareholders resident in the other state is eliminated. This results from the reduction of the tax credit available to U.K. shareholders to 10/90.
- (b) Under a European Union (EU) directive, no withholding tax may be imposed on dividends paid to a parent company resident in an EU member state by a subsidiary resident in another EU member state that is owned 25% or more by the parent company. Under another EU directive, payments of interest and royalties made between, broadly, associated companies resident in EU member states are exempt from withholding tax. Numerous conditions and transitional rules apply, including some that delay the application of the rules for several years.
- (c) Antiavoidance provisions restrict the tax credit repayment or other treaty benefits in certain circumstances.
- (d) No withholding tax is imposed on copyright royalties for any literary, dramatic, musical or artistic work (except motion pictures, films, videotapes, etc.).
- (e) See Section B.
- (f) The lower rate applies to interest paid with respect to the following: loans from banks and insurance companies; securities quoted on a stock exchange; and certain sales of machinery and equipment.
- (g) The higher rate applies to cinematographic royalties.
- (h) The higher rate applies to industrial royalties.
- (i) The 2% rate applies to payments for the use of, or right to use, industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (j) The lower rate applies to payments for the use of industrial, commercial or scientific equipment. The higher rate applies to other royalties.
- (k) The 5% rate applies to royalties for patents, trademarks or processes as well as to royalties for know-how concerning industrial, commercial or scientific experience. The 7% rate applies to royalties for copyrights of literary, artistic or scientific works.
- (l) The standard rate of withholding tax on interest is 12%. Interest is exempt from withholding tax if any of the following apply:
  - The state is the payer of the interest;
  - The interest is paid on a loan made, guaranteed or insured by the other contracting state;
  - The interest is paid on a loan granted by a bank to an unrelated party at preferential rates and the loan is repayable over a period of not less than five years; or
  - The interest is paid on a debt resulting from either of the following:
    - Sales on credit of industrial, commercial or scientific equipment by a resident of the other contracting state (excluding sales between related persons); or
    - Purchases of industrial, commercial or scientific equipment financed through a leasing contract.
- (m) The 3% rate applies to royalties for the right to use news. The 5% rate applies to royalties for copyrights of artistic works. The 10% rate applies to royalties for patents. The 15% rate applies to other royalties.
- (n) The lower rate applies to copyright royalties.
- (o) The lower rate (the 10% rate under the India treaty) applies to interest paid to banks and other financial institutions.
- (p) The higher rate applies if the recipient is a Malawi company that controls more than 50% of the voting power in the U.K. company that makes the payment.
- (q) The lower rate applies to interest on listed bonds.
- (r) The higher rate applies to cinema, television and radio broadcasting royalties.
- (s) The higher rate applies to motion picture film royalties.
- (t) The 5% rate applies to patent royalties.

The United Kingdom has also entered into tax treaties with Algeria, Brazil, Cameroon, Ethiopia, Iran, Lebanon, Saudi Arabia and Zaire. These treaties do not have articles covering dividends, interest or royalties. Payments to these countries are subject to withholding tax at the nontreaty countries' rates set forth in the above table.

The United Kingdom has signed tax treaties with Botswana (to replace an existing treaty), France (to replace an existing treaty) and Georgia, but the treaties are not yet in force. The United Kingdom is completing work on tax treaties with the Cayman Islands, Iran, Japan and Poland. Negotiations are progressing with China, Germany, Hungary, Hong Kong, Italy, Luxembourg, the Netherlands, Saudi Arabia, Switzerland and Thailand. Exploratory talks are planned regarding new tax treaties to replace existing treaties with the Faroe Islands, Macedonia and Mexico.

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**BUFFALO, NEW YORK****GMT -5**

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**A. At a Glance**

Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35
Branch Tax Rate (%)	35 (a)
Withholding Tax (%) (b)	
Dividends	30 (c)
Interest	30 (c)(d)
Royalties from Patents, Know-how, etc.	30 (c)
Branch Remittance Tax	30 (e)
Net Operating Losses (Years)	
Carryback	2 (f)
Carryforward	20 (f)

- (a) In addition, many states levy income or capital-based taxes. An alternative minimum tax is imposed (see Section B).
- (b) Rates may be reduced by treaty.
- (c) Applicable to payments to nonresidents.
- (d) Interest on certain "portfolio debt" obligations issued after 18 July 1984 and noneffectively connected bank deposit interest are exempt from withholding tax.
- (e) This is the branch profits tax (see Section D).
- (f) Special rules apply to certain types of losses and entities. For details, see Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** U.S. corporations are subject to federal taxes on their worldwide income, including income of foreign branches (whether or not the profits are repatriated). In general, a U.S. corporation is not taxed by the United States on the earnings of a foreign subsidiary until the subsidiary distributes dividends or is sold or liquidated. Numerous exceptions to this deferral concept may apply, resulting in current U.S. taxation of some or all of the foreign subsidiary's earnings.

Branches of foreign corporations generally are taxable on income that is effectively connected with a U.S. trade or business. However, if the foreign corporation is resident in a country having an income tax treaty with the United States, business profits are taxable by the United States only to the extent the income is attributable to a permanent establishment in the United States.

**Rates of Corporate Tax.** A corporation's taxable income exceeding \$75,000 but not exceeding \$10 million is taxed at 34%. Corporations with taxable income between \$335,000 and \$10 million are effectively taxed at 34% on all taxable income (including the first \$75,000). Corporations with taxable income of less than \$335,000 receive partial benefit from the graduated rates of 15% and 25% that apply to the first \$75,000 of taxable income. A corporation's taxable income exceeding \$15 million but not exceeding \$18,333,333 is subject to an additional tax of 3%. Corporations with taxable income in excess of \$18,333,333 are effectively subject to tax at a rate of 35% on all taxable income. These rates apply both to U.S. corporations and to the income of foreign corporations that is effectively connected with a U.S. trade or business.

**Alternative Minimum Tax.** The alternative minimum tax (AMT) is designed to prevent corporations with substantial economic income from using preferential deductions, exclusions and credits to substantially reduce or eliminate their tax liability. To achieve this goal, the AMT is structured as a separate tax system with its own



allowable deductions and credit limitations. The tax is imposed at a flat rate of 20% on alternative minimum taxable income (AMTI). It is an “alternative” tax because corporations are required to pay the higher of the regular tax or AMT. To the extent the AMT exceeds regular tax, a minimum tax credit is generated and carried forward to offset the taxpayer’s regular tax to the extent it exceeds the AMT in future years.

In general, AMTI is computed by making adjustments to regular taxable income and then adding back certain nondeductible tax preference items. The required adjustments are intended to convert preferential deductions allowed for regular tax (for example, accelerated depreciation) into less favorable alternative deductions that are allowable under the parallel AMT system. In addition, an adjustment based on “adjusted current earnings” can increase or decrease AMTI. Net operating losses and foreign tax credits may reduce AMT by up to 90%, compared to a potential reduction of 100% for regular tax purposes.

An AMT exemption applies to small business corporations that meet certain income requirements.

**Capital Gains and Losses.** Capital gains are taxed at a maximum rate of 35%. In general, capital losses may offset only capital gains, not ordinary income. A corporation’s excess capital loss may be carried back three years and forward five years to offset capital gains in such other years.

**Administration.** The annual tax return is due by the 15th day of the third month after the close of the company’s fiscal year. A corporation is entitled, upon request, to an automatic six-month extension to file its return. In general, 100% of a corporation’s tax liability must be paid through quarterly estimated tax installments during the year in which the income is earned. The estimated tax payments are due on the 15th day of the fourth, sixth, ninth and twelfth months of the company’s fiscal year. The Tax Increase Prevention and Reconciliation Act of 2005 increased the corporate estimated tax payments due for July, August, and September 2012 and 2013 for certain large corporations. Under the act, for corporations with assets of at least \$1 billion, the payments due in July, August and September 2012 will be increased to 106.25% of the payment otherwise due and the next required payment will be reduced accordingly. In addition, for such corporations, the payments due in July, August and September 2013 will be increased to 100.75% of the payment otherwise due and the next required payment will be reduced accordingly.

**Foreign Tax Relief.** A tax credit is allowed for foreign income taxes paid, or deemed paid, by U.S. corporations, but the credit is generally limited to the amount of U.S. tax incurred on the foreign-source portion of a company’s worldwide taxable income. For tax years beginning on or after 1 January 2007, separate limitations must be calculated for passive income and for “general” category income (most types of active business income). For tax years beginning before 2007, separate limitations applied to various categories of income, including the following: passive income; high withholding tax interest income; financial services income; shipping income; and dividend income from each foreign corporation in which the company held a 10% or greater interest and all U.S. shareholders held a total interest of less than 50%.

### C. Determination of Taxable Income

**General.** Income for tax purposes is generally computed according to generally accepted accounting principles, as adjusted for certain statutory tax provisions. Consequently, taxable income typically does not equal income for financial reporting purposes.

In general, a deduction is permitted for ordinary and necessary trade or business expenses. However, expenditures that create an asset having a useful life longer than one year may need to be capitalized and recovered ratably.

**Depreciation.** A depreciation deduction is available for most property (except land) used in a trade or business or held for the production of income, such as rental property. Tangible depreciable property that is used in the United States (whether new or used) and placed in service after 1980 and before 1987 is generally depreciated on an accelerated basis (ACRS). Tangible depreciable property that is used in the United States and placed in service after 1986 is generally depreciated under a modified ACRS basis. In general, under the modified ACRS system, assets are grouped into six classes of personal property and into two classes of real property. Each class is assigned a recovery period and a depreciation method. The following are the depreciation methods and recovery periods for certain assets.

Asset	Depreciation Method	Recovery Period (Years)
Commercial and industrial buildings	Straight-line	39 (a)
Office equipment	Double-declining balance or straight-line	7 or 12
Motor vehicles and computer equipment	Double-declining balance or straight-line	5 or 12
Plant and machinery	Double-declining balance or straight-line	7 or 12 (b)

(a) 31.5 years if placed in service before 13 May 1993.

(b) These are generally the recovery periods.

Alternatively, a taxpayer may elect to use the straight-line method of depreciation over specified longer recovery periods or the methods prescribed for AMT purposes, which would avoid a depreciation adjustment for AMT.

The cost of intangible assets developed by a taxpayer may be amortized over the determinable useful life of an asset. Certain intangible assets, including goodwill, going concern value, patents and copyrights, may generally be amortized over 15 years if they are acquired as part of a business after 10 August 1993. A taxpayer may elect to apply this provision to all property acquired after 25 July 1991.

Tax depreciation is generally subject to recapture on the sale of an asset to the extent the sales proceeds exceed the tax value after depreciation. The amounts recaptured are subject to tax as ordinary income.

**Net Operating Losses.** If allowable deductions of a U.S. corporation or branch of a foreign corporation exceed its gross income, the excess is called a net operating loss (NOL). In general, NOLs may be carried back 2 years and forward 20 years to offset taxable income in those years. A specified liability loss (product liability loss) may be carried back 10 years. Commercial banks may carry back bad debt losses 10 years and carry forward such losses 5 years. A real estate investment trust (REIT) may not carry back an NOL to a tax year in which the entity operated as a REIT. Farming business losses may be carried back five years. Limitations apply in utilizing NOLs of acquired operations.

**Inventories.** Inventory is generally valued for tax purposes at either cost or the lower of cost or market value. In determining the cost of goods sold, the two most common inventory flow assumptions used are last-in, first-out (LIFO) and first-in, first-out (FIFO). The method chosen must be applied consistently. Uniform capitalization rules require the inclusion in inventory costs of many expenses previously deductible as period costs.

**Dividends.** In general, dividends received from other U.S. corporations qualify for a 70% dividends-received deduction, subject to certain limitations. The dividends-received deduction is generally increased to 80% of the dividend if the recipient corporation owns at least 20% of the distributing corporation. Dividend payments between members of an affiliated group of U.S. corporations qualify for a 100% dividends-received deduction. In general, an affiliated group consists of a U.S. parent corporation and all other U.S. corporations in which the parent owns, directly or indirectly through one or more chains, at least 80% of the total voting power and value of all classes of shares (excluding nonvoting preferred shares).

**Consolidated Returns.** An affiliated group of U.S. corporations (as described in *Dividends* above) may elect to determine its taxable income and tax liability on a consolidated basis. The consolidated return provisions generally allow electing corporations to report aggregate group income and deductions in accordance with the requirements for financial consolidations. Consequently, the net operating losses of some members of the group can be used to offset the taxable income of other members of the group, and transactions between group members, such as intercompany sales and dividends, are generally deferred or eliminated until there is a transaction outside the group. Under certain circumstances, losses incurred on the sale of consolidated subsidiaries are disallowed.

**Foreign Subsidiaries.** Under certain circumstances, undistributed income of a foreign subsidiary controlled by U.S. shareholders is taxed to the U.S. shareholders on a current basis, as if the foreign subsidiary distributed a dividend on the last day of its taxable year. This may result if the foreign subsidiary invests its earnings in "U.S. property" (including loans to U.S. shareholders) or earns certain types of income (referred to as "Subpart F" income), including certain passive income and "tainted" business income.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Branch profits tax, on branch profits (reduced by reinvested profits and increased by withdrawals of previously reinvested earnings); the rate may be reduced by treaty	30
Branch interest tax, on interest expense paid by a branch (unless the interest would be exempt from withholding tax if paid by a U.S. corporation); the rate may be reduced by treaty	30
Personal holding company (PHC) tax, applies to a corporation not meeting the definition of a foreign personal holding company (FPHC) that satisfies a passive-income test; in addition to regular tax or AMT; imposed on undistributed income	15
Accumulated earnings tax, penalty tax levied on a corporation (excluding a PHC) accumulating profits to avoid shareholder-level personal income tax; assessed on accumulated taxable income exceeding \$250,000 (\$150,000 for certain personal services corporations)	39.6
State and local income taxes, imposed by most states and some local governments	0 to 13
State and local sales taxes, imposed by many states and some local governments	Various
Payroll taxes	
Federal unemployment insurance (FUTA), imposed on first \$7,000 of wages	6.2
Workmen's compensation insurance; provisions vary according to state laws; rates vary depending on nature of employees' activities	Various
Social security contributions (including 1.45% Medicare tax), imposed on	
Wages up to \$102,000 (for 2008); paid by Employer	7.65
Employee	7.65
Wages in excess of \$102,000 (for 2008; Medicare tax); paid by Employer	1.45
Employee	1.45

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The United States currently has no foreign-exchange control restrictions.

**Debt-to-Equity Rules.** The United States has thin-capitalization principles under which the Internal Revenue Service (IRS) may attempt to limit the deduction for interest expense if a U.S. corporation is thinly capitalized. In such case, funds loaned to it by a related party may be recharacterized by the IRS as equity. As a result, the corporation's deduction for interest expense may be disallowed, and principal and interest payments may be considered distributions to the related party and be subject to withholding tax.

The United States has no fixed rules for determining if a thin-capitalization situation exists. A debt-to-equity ratio of 3:1 or less

is usually acceptable to the tax authorities, provided the taxpayer can adequately service its debt without the help of related parties.

However, a deduction is disallowed for certain “disqualified” interest paid on loans made or guaranteed by related foreign parties that are not subject to U.S. tax on the interest received. This disallowed interest may be carried forward to future years and allowed as a deduction. No interest deduction is disallowed under this provision if the payer corporation’s debt-to-equity ratio does not exceed 1.5:1. If the debt-to-equity ratio exceeds this amount, the deduction of any “excess interest expense” of the payer is deferred. “Excess interest expense” is defined as the excess of interest expense over interest income, minus 50% of the adjusted taxable income of the corporation plus any “excess limitation carryforward.” Special rules apply to corporate partners in partnerships for purposes of determining disallowances.

In addition, under U.S. Treasury regulations, interest expense accrued on a loan from a related foreign lender must be actually paid before the U.S. borrower can deduct the interest expense.

**Transfer Pricing.** In general, the IRS may redetermine the tax liability of related parties if, in its discretion, this is necessary to prevent the evasion of taxes or to clearly reflect income. Specific regulations require that related taxpayers (including U.S. persons and their foreign affiliates) deal among themselves on an arm’s length basis. Under the best-method rule included in the transfer-pricing regulations, the best transfer-pricing method is determined based on the facts and circumstances. Transfer-pricing methods that may be acceptable, depending on the circumstances, include uncontrolled price, resale price and profit-split. It is possible to reach transfer-pricing agreements in advance with the IRS.

If the IRS adjusts a taxpayer’s tax liability, tax treaties between the U.S. and other countries usually provide procedures for allocation of adjustments between related parties in the two countries to avoid double tax.

**Tax Accounting and Internal Controls.** Tax accounting matters have received a great deal of attention in the United States and globally over the past few years.

On 13 July 2006, the Financial Accounting Standards Board (FASB) issued Interpretation No. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes*, which is the most significant change to accounting for income taxes since the adoption of the liability approach (through FASB Statement No. 109) in 1992. FIN 48 uses a two-step approach to evaluate tax positions and prescribes the minimum recognition threshold that must be met by a tax position before the position can be recognized in the financial statements (a more likely than not threshold).

On 4 December 2007, the FASB issued the final Statement of Financial Accounting Standards No. 141(R), *Business Combinations*. The new standard will significantly change the financial accounting and reporting of business combination transactions, including accounting for income taxes. The issuance of the standard represents the culmination of the first major collaborative convergence project between the International Accounting Standards Board (IASB) and the FASB. The revised standard is

effective for years beginning after 15 December 2008, with early adoption prohibited.

Since the effective date of Section 404 of the Sarbanes-Oxley Act of 2002, audits of internal controls have uncovered tax-related internal control deficiencies, which have represented one of the leading causes of material weaknesses and resulted in many high-profile financial restatements over the past few years. The following are the three most cited causes of tax-related material weaknesses:

- Ineffective controls over accounting for deferred taxes, including errors in documenting the assessment of the need for a valuation allowance;
- Errors in identification and evaluation of tax issues in connection with business combinations and other complex and non-routine transactions such as stock compensation; and
- Lack of personnel with sufficient tax accounting knowledge, experience and training.

## F. Treaty Withholding Tax Rates

The following are U.S. withholding tax rates for dividend, interest and royalty payments from the United States to residents of various treaty countries.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Patent and Know-how Royalties</b> %
Australia	15/5/0 (r)	10/0 (s)	5
Austria	15/5 (a)	0	0
Bangladesh	15/10	10/5	10
Barbados	15/5 (a)	5	5
Belgium (t)	15/5/0 (r)	15	0
Canada (dd)	15/5 (a)	10	0
China	10	10	10
Cyprus	15/5 (a)	10	0
Czech Republic	15/5 (a)	0	10
Denmark (v)	15/5/0 (r)	0	0
Egypt	15/5 (a)	15	15
Estonia	15/5 (a)	10	10/5 (j)
Finland (z)	15/5/0 (r)	0	0
France (w)	15/5 (a)	0	5
Germany (bb)	15/5/0 (r)	0	0
Greece	30	30/0 (b)	0
Hungary	15/5 (a)	0	0
Iceland (y)	15/5 (a)	0	0
India	25/15 (a)	15	15/10 (g)
Indonesia	15/10 (a)	10	10
Ireland	15/5 (a)	0	0
Israel	25/12.5 (a)	17.5/10 (e)	15/10 (f)
Italy (c)	15/5 (a)	15	10
Jamaica	15/10 (a)	12.5	10
Japan	10/5/0	10	0
Kazakhstan	15/5 (a)	10	10
Korea	15/10 (a)	12	15
Latvia	15/5 (a)	10	10/5 (j)
Lithuania	15/5 (a)	10	10/5 (j)
Luxembourg	15/5 (a)	0	0

	<b>Dividends</b>	<b>Interest</b>	<b>Patent and Know-how Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Mexico	10/5/0 (o)	15/10/4.9 (d)	10
Morocco	15/10 (a)	15	10
Netherlands	15/5/0	0	0
New Zealand	15	10	10
Norway (aa)	15	0 (i)	0
Pakistan	30/15 (a)	30	0
Philippines	25/20 (a)	15	15
Poland (x)	15/5 (a)	0	10
Portugal	15/10 (a)	10	10
Romania (u)	10	10	15
Russian Federation	10/5 (a)	0	0
Slovak Republic	15/5 (a)	0	10
Slovenia	15/5 (a)	5	5
South Africa	15/5 (a)	0	0
Spain	15/10 (a)	10	10
Sri Lanka	15	10	10/5
Sweden	15/5/0 (a)(cc)	0	0
Switzerland	15/5 (a)	0	0
Thailand	15/10 (a)	15/10 (m)	15/8/5
Trinidad and Tobago	30	30	15
Tunisia	20/14 (a)	15	15
Turkey	20/15 (a)	15/10 (m)	10/5 (n)
Ukraine	15/5 (a)	0	10
USSR (l)	30	0	0
United Kingdom	15/5/0 (p)	0 (q)	0
Venezuela	15/5 (a)	10/4.9 (k)	10/5 (n)
Nontreaty countries	30	30 (h)	30

Various exceptions or conditions may apply, depending upon the terms of the particular treaty.

- (a) The withholding rate is reduced to 5% (10% in the case of Indonesia, Jamaica, Korea, Morocco, Portugal, Spain and Thailand; 12.5% in the case of Israel; 14% in the case of Tunisia; 15% in the case of India, Pakistan and Turkey; and 20% in the case of the Philippines) if, among other conditions, the recipient is a corporation owning a specified percentage of the voting power of the distributing corporation.
- (b) The exemption does not apply if the recipient controls directly or indirectly more than 50% of the voting power in the paying corporation.
- (c) On 25 August 1999, the United States signed a new tax treaty with Italy. Under the new treaty, the withholding tax rate will be 5% for dividends paid to owners of 25% of the voting shares of the payer. For other dividends, the withholding tax rate will be 15%. The withholding tax rate on interest will be 10%. The withholding tax rate on royalties for computer software and industrial equipment will be 5%. For other royalties, the withholding tax rate will be 8%. The treaty will generally take effect on 1 January of the year following the date of the exchange of instruments of ratification. For withholding taxes, it will take effect on the first day of the second month following the exchange of instruments. The U.S. Senate gave its advice and consent on 5 November 1999, and President Clinton signed the U.S. instruments of ratification on 28 December 1999. However, the exchange of instruments of ratification has not yet occurred, and the treaty has not entered into force.
- (d) The 4.9% rate applies to interest paid on loans (except back-to-back loans) made by banks and insurance companies and to interest paid on publicly traded securities. The 10% rate applies to interest paid by banks and to interest paid by sellers to finance purchases of machinery and equipment. The 15% rate applies to other interest.
- (e) The 10% rate applies to interest on bank loans. The 17.5% rate applies to other interest.

- (f) The 10% rate applies to copyright and film royalties.
- (g) The 10% rate applies to certain types of royalties.
- (h) Interest on certain "portfolio debt" obligations issued after 18 July 1984 and noneffectively connected bank deposit interest are exempt from withholding tax.
- (i) The general withholding rate for interest may be increased to 10% if both Norway and the United States tax interest paid to nonresidents under their domestic tax laws. Norway reportedly does not impose tax on interest paid to nonresidents and, consequently, a 0% rate applies to U.S.-source interest under the treaty. The treaty also provides that a 0% rate applies to certain types of interest, such as interest paid on bank loans.
- (j) The 5% rate applies to royalties paid for the use of commercial, industrial or scientific equipment.
- (k) The 4.9% rate applies to interest paid on loans made by financial institutions and insurance companies. The 10% rate applies to other interest.
- (l) The U.S. Department of Treasury has announced that the income tax treaty between the United States and the USSR, which was signed on 20 June 1973, continues to apply to the former republics of the USSR, including Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan, until the United States enters into tax treaties with these countries. The United States has entered into tax treaties with Estonia, Kazakhstan, Latvia, Lithuania, the Russian Federation and Ukraine. The withholding rates under these treaties are listed in the above table.
- (m) The 10% rate applies to interest on loans granted by financial institutions. The 15% rate applies to other interest.
- (n) The 5% rate applies to payments for the right to use industrial, commercial or scientific equipment. The 10% rate generally applies to other royalties.
- (o) The 0% rate applies to the following dividends: dividends paid to certain recipients who own at least 80% of the voting shares of the payer of the dividends; and dividends paid to certain pension plans. The 5% rate applies if the conditions for the 0% rate are not met and if the recipient owns at least 10% of the payer of the dividends. The 10% rate applies if the 10% ownership threshold is not met. A protocol to the treaty provides an exemption from the 5% "dividend equivalent amount" tax if certain conditions are met (the conditions are similar to those that apply with respect to the 0% withholding tax rate on dividends).
- (p) The 0% rate applies if the dividends are paid by U.S. companies to U.K. companies that owned 80% or more of the voting shares of the payer of the dividends for a 12-month period preceding the declaration of the dividends and if either of the following additional conditions is met: the 80% test was met before 1 October 1998; or the recipient is a qualified resident under certain prongs of the limitation-on-benefits provision in the treaty. The 0% rate also applies to U.S.-source dividend payments made to U.K. pension schemes. The 5% rate applies if the beneficial owner of the dividends is a company owning 10% or more of the payer. For other dividends, the 15% rate applies.
- (q) Withholding tax may be imposed at the full domestic rate on interest paid in certain circumstances.
- (r) The 0% rate applies to dividends paid by an 80%-owned U.S. corporation to its parent company. The 5% rate applies to dividends paid to a company that directly owns at least 10% of the voting power of the payer. The 15% rate applies to other dividends.
- (s) The 10% rate applies to all interest payments with the following exceptions: interest derived by the government of a contracting state; and interest derived by certain financial institutions.
- (t) On 28 December 2007, a new income tax treaty and protocol between the United States and Belgium entered into force. The new treaty and protocol provide for a full withholding tax exemption on certain parent-subsidiary dividends and for a full exemption from the withholding tax on royalties. The new withholding rates, which are reflected in the above treaty withholding tax rate table, are effective from 1 February 2008.
- (u) In November 2005, preliminary discussions on a new tax treaty began with Romania. However, as of 1 January 2008, a new treaty had not yet been signed.
- (v) On 28 Dec 2007, the 2006 protocol to the 1999 income tax treaty between the United States and Denmark entered into force. The new protocol provides a full exemption from dividend withholding tax on certain parent-subsidiary dividends. The new withholding tax rate, which is reflected in the above treaty withholding tax rate table, is effective from 1 February 2008.
- (w) On 8 December 2004, the United States and France signed a protocol that would amend their 1994 income tax treaty. The U.S. Senate approved the agreement on 31 March 2006. However, the protocol has not yet been ratified.



- (x) U.S. government officials stated in November 2005 that preliminary discussions on a new tax treaty had begun with Poland. However, as of 1 January 2008, a new treaty had not yet been signed.
- (y) The United States and Iceland signed a new income tax treaty and protocol in October 2007. As of 1 January 2008, the treaty and protocol were awaiting hearings before the Senate Foreign Relations Committee.
- (z) On 28 December 2007, the 2006 protocol between the United States and Finland entered into force, amending the 1989 income tax treaty between the countries. The new protocol provides a full exemption from dividend withholding tax on certain parent-subsidiary dividends and on dividends paid to certain pension funds. It also eliminates the withholding tax on cross-border royalty payments. These new withholding tax rates are reflected in the above treaty withholding tax rate table. The protocol with Finland includes a retroactive provision with respect to withholding tax on dividends. In both Finland and the United States, the protocol is effective with respect to dividend income derived on or after 1 January 2007. With respect to other taxes withheld at source (that is, withholding taxes other than dividend withholding tax), the new protocol is effective for amounts paid or credited in the United States and for income derived in Finland on or after 1 February 2008. For example, in the United States, the exemption from withholding tax on royalties will be effective for amounts paid or credited on or after 1 February 2008.
- (aa) The United States and Norway initialed a new income tax treaty in 2006. On 5 April 2006, the U.S. announced that negotiations were completed but that no treaty had been signed.
- (bb) The 1 June 2006 protocol to the 1989 income tax treaty between the United States and Germany entered into force on 28 December 2007. The new protocol provides a full and retroactive exemption from dividend withholding tax on certain parent-subsidiary dividends and on dividends paid to certain pension funds. The new withholding tax rate is reflected in the above treaty withholding tax rate table. The retroactive provision of the protocol applies to withholding tax on amounts paid or credited on or after 1 January 2007.
- (cc) Under a protocol to the Sweden treaty, dividends are exempt from withholding tax if the beneficial owner of the dividends is a company that satisfies both of the following conditions:
- It owns, directly or indirectly, through one or more residents of either the United States or Sweden, 80% or more of the voting power of the payer for the 12-month period ending on the date on which entitlement to the dividend is determined; and
  - It meets one of the specified tests under the limitation-on-benefits provision in the new Article 17.
- (dd) On 21 September 2007, the United States and Canada signed a proposed protocol to amend their 1980 Convention with Respect to Taxes on Income and on Capital. This protocol would extend the 15% dividend withholding rate to dividends paid by a U.S. real estate investment trust (REIT) if certain conditions are met. Article 6 of the protocol proposes to eliminate withholding tax on interest payments paid between residents of the United States and Canada. The treaty will enter into force generally on the date of the exchange of notifications that the ratification procedures have been completed.

The United States terminated its treaties with Aruba and the Netherlands Antilles, effective 1 January 1988. A modification of the U.S. termination notice provided that Article VIII of the treaties, which exempted from U.S. tax interest paid by U.S. persons to corporations and residents of Aruba and the Netherlands Antilles, remained in force. As a result, the United States had “mini tax treaties” with these countries. In 1995, the United States and the Netherlands Antilles agreed to limit application of their mini tax treaty. Under this agreement (protocol), which is effective from 30 December 1996, the mini tax treaty applies only to interest paid with respect to debt instruments issued on or before 18 July 1994 (“grandfathered Eurobonds interest”). The United States has indicated that it will renegotiate the mini tax treaty if requested by the Netherlands Antilles. The Netherlands Antilles has filed through the appropriate diplomatic channels a formal petition requesting renegotiation of the treaty. The United States terminated its mini tax treaty with Aruba, effective 1 January 1997.

On 23 February 2007, the United States and Bulgaria signed the first income tax treaty between the countries which, among other measures, provides for reductions of withholding taxes on dividends, interest, and royalties. The Senate Foreign Relations Committee will conduct hearings on the treaty before it is considered by the full Senate.

In December 2005, informal meetings regarding a tax treaty were held with Vietnam.

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## U.S. VIRGIN ISLANDS

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### A. At a Glance

Corporate Income Tax Rate (%)	38.5 (a)
Capital Gains Tax Rate (%)	38.5 (a)
Branch Tax Rate (%)	38.5 (a)
Withholding Tax (%) (b)	
Dividends	11
Interest	11
Royalties from Patents, Know-how, etc.	11
Branch Remittance Tax	11 (c)
Net Operating Losses (Years) (d)	
Carryback	2
Carryforward	20

- (a) Maximum rate. Includes a nondeductible 10% surcharge.  
 (b) The statutory rate for each withholding tax is 10%. The U.S. Virgin Islands Bureau of Internal Revenue has taken the position that the 10% surcharge also applies to each withholding tax, and consequently the withholding rate is 11%.  
 (c) This is the branch profits tax, imposed on the earnings of a foreign corporation attributable to its branch, reduced by earnings reinvested in the branch and increased by reinvested earnings withdrawn (see Section B).  
 (d) These periods apply to losses incurred in tax years beginning after 5 August 1997. A three-year carryback period is available in certain circumstances.

### B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** The system of corporate income taxation in force in the U.S. Virgin Islands is generally a mirror image of the U.S. Internal Revenue Code (I.R.C). The applicable law is the I.R.C. with “U.S. Virgin Islands” substituted for all references to the “United States.” Significant differences between U.S. and U.S. Virgin Islands taxation are discussed below.

U.S. Virgin Islands corporations are subject to income tax on their worldwide income. A foreign corporation, which is a corporation organized outside the U.S. Virgin Islands, is subject to income tax only on its income from U.S. Virgin Islands sources and on its income that is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands.

Under Section 937(b) of the I.R.C., rules similar to those for determining U.S.-source income or income effectively connected with the conduct of a trade or business in the United States must be used to determine if income is from sources within the U.S. Virgin Islands or effectively connected with the conduct of a trade or business within the U.S. Virgin Islands.

**Rates of Corporate Income Tax.** Corporations are taxed at the rates specified in the I.R.C., except that the U.S. Virgin Islands imposes an additional 10% surcharge on the tax liability of all domestic and foreign corporations. This increases the maximum effective income tax rate to 38.5%.

U.S. Virgin Islands corporations may benefit from the tax exemptions and reductions indicated below.

*Economic Development Program.* Qualifying corporations are exempt from income tax on up to 90% of their income. In addition, they are exempt from real property, gross receipts and certain excise taxes. Other reductions in various taxes may apply.

*Exempt Companies.* Qualifying corporations that are foreign-owned and do not carry on a trade or business in the United States or in the U.S. Virgin Islands may elect a 20-year exemption from substantially all U.S. Virgin Islands taxes.

**Alternative Minimum Tax.** The alternative minimum tax rules in the U.S. Virgin Islands are the same as those in the United States.

**Branch Profits Tax and Branch Interest Tax.** The branch profits tax (BPT) and branch interest tax (BIT) rules in the U.S. Virgin Islands are similar to those in the United States, except that the BPT and BIT rates are 11% (including the 10% surcharge) instead of 30%. Under certain circumstances, these taxes may not apply to U.S. corporations doing business in the U.S. Virgin Islands.

**Capital Gains and Losses.** The provisions applicable to capital gains and losses in the U.S. Virgin Islands are the same as those in the United States.

**Administration.** The annual income tax return is due by the fifteenth day of the third month after the close of the company's fiscal year. On request, a corporation receives an automatic six-month extension to file its return. In general, 100% of a corporation's tax liability must be paid through estimated tax installments during the year in which the income is earned.

Domestic and foreign corporations file their returns with the Bureau of Internal Revenue (BIR).

**Foreign Tax Relief.** The provisions related to foreign tax credits are similar to those in the United States.

**Foreign Investment in Real Property Tax Act.** The Foreign Investment in Real Property Tax Act (FIRPTA) applies to corporations owning real property interests in the U.S. Virgin Islands. Under this act, a foreign corporation (including a U.S. corporation) pays tax attributable to its gain from the sale of U.S. Virgin Islands property to the U.S. Virgin Islands treasury.

## **C. Determination of Trading Income**

**General.** The rules for determining trading income are the same as those in the United States.

**Groups of Companies.** A U.S. Virgin Islands corporation may not file a consolidated income tax return with a related U.S. tax entity. However, a group of U.S. Virgin Islands corporations may file a consolidated return with the BIR if they meet the requirements set by the I.R.C. provisions for consolidated returns.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Gross receipts tax, on total business receipts	4
Excise tax, on imported goods, merchandise and commodities for sale or for processing in the U.S. Virgin Islands unless exempt by law; tax is computed on invoice value plus a 5% mark-up	2 to 35
Real property tax, on 60% of the actual value of the property as determined by the tax assessor; rate reduced on a primary residence	1.25
Franchise tax, imposed annually on capital stock of domestic and foreign corporations qualified to do business in the U.S. Virgin Islands; minimum tax is \$150	0.15
Stamp tax, on transfer of real or personal property located in U.S. Virgin Islands	2 to 3.5
Payroll taxes	
Federal unemployment insurance (FUTA), imposed on first \$7,000 of wages	6.2
U.S. Virgin Islands unemployment insurance (creditable against FUTA)	5.4
Workmen's compensation insurance, varies depending on classification of employee's activities	Various
Social security contributions; subject to the same limitations as in the United States; imposed on	
Wages up to \$102,000 (for 2008); paid by Employer	7.65
Employee	7.65
Wages in excess of \$102,000 (for 2008); paid by	
Employer	1.45
Employee	1.45
Insurance premium tax, on gross premiums received by insurers for insurance policies covering risks in the U.S. Virgin Islands; certain exceptions apply	5

#### E. Miscellaneous Matters

**Foreign-Exchange Controls.** The U.S. Virgin Islands has not enacted any specific foreign-exchange controls, but U.S. laws concerning cash transaction reporting and other financial matters are applicable.

**Debt-to-Equity Rules.** The U.S. Virgin Islands debt-to-equity rules are the same as those in the United States.

## F. Treaty Withholding Tax Rates

The U.S. Virgin Islands does not have tax treaties with foreign governments.

## URUGUAY

(Country Code 598)

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## A. At a Glance

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	25
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	7 (a)(b)
Interest	12 (a)(b)
Royalties	12 (a)(b)
Equipment Rent	12 (a)(b)
Technical Assistance Payments and Service Fees	12 (a)(b)
Branch Remittance Tax	7 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) Applicable to nonresidents. Nonresident corporations are corporations not incorporated in Uruguay.

(b) See Section B.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Corporations are taxed on Uruguay-source income, defined as income derived from activities performed, property situated or economic rights used in Uruguay. Any profits, including capital gains, are taxable.

**Rate of Corporate Tax.** The corporate tax rate is 25%.

**Capital Gains.** Capital gains are included in ordinary income and taxed at the regular corporate rate.

**Administration.** Corporations are required to make monthly advance payments. These payments are calculated by applying to monthly gross income a fraction with a numerator equal to income tax for the prior tax year and a denominator equal to the corporation's gross income for that year. For the months of the current year prior to filing the income tax return, however, the income tax and gross income used are from the corresponding months of the prior year. Filing of tax returns and payment of the balance must be made by the fourth month after the end of the accounting period, which is the company's tax year-end.

**Dividends and Branch Remittances.** Dividends paid to resident companies are exempt from tax. Dividends paid to resident individuals are subject to personal income tax at a rate of 7% if the dividends are paid out of income subject to corporate income tax. Dividends paid to nonresident companies and individuals and branch remittances are subject to withholding tax at a rate of 7% if they are paid out of income subject to corporate income tax. Dividends and branch remittances paid out of income not subject to corporate income tax are exempt from tax.

**Withholding Tax on Certain Payments to Nonresidents.** In general, a 12% withholding tax is imposed on the following payments to nonresidents: interest; royalties; technical assistance payments; service fees; and equipment rent.

### C. Determination of Trading Income

**General.** Tax is imposed on taxable profit, which is accounting profit earned in the accounting period after tax adjustments. An inflation adjustment is applied. All Uruguay-source income is taxable. Expenses are deductible to the extent that they are incurred in producing taxable income.

Payments to nonresidents that are subject to the 12% withholding tax (see Section B) are fully deductible as expenses if the effective tax rate of the country of the recipient is 25% or higher. If the effective tax rate of the country of the recipient is lower than 25%, only a percentage of the expenses is deductible. The percentage equals the ratio of the effective tax rate in the country of the recipient to the corporate income tax rate of 25% in Uruguay. The minimum percentage is 48% (the ratio of the withholding tax rate of 12% to the corporate income tax rate of 25%).

**Inventories.** Stock is valued according to cost of purchases or production costs. Last-in, first-out (LIFO), first-in, first-out (FIFO), average cost and market price are acceptable methods. The corporation can choose which method to use, but may not change the method without prior authorization.

**Provisions.** Only deductions for expenses already incurred are allowed. Provisions for bad debts and severance pay are not allowed. Bad debts may be written off if the debtor goes bankrupt or if 18 months have elapsed since the obligation to pay the debt became due.

**Depreciation.** A depreciation deduction may be taken on tangible assets based on their useful lives using the straight-line method. The following are some of the applicable rates.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings	2/3 (a)
Motor vehicles	10
Office equipment	10 (b)
Machinery and equipment	10 (b)

- (a) The 2% rate applies to buildings in urban areas; the 3% rate applies to buildings in rural areas.
- (b) This is the usual rate. The rate for a particular asset depends on its estimated useful life.

For some assets, the units-of-production method may be used. Goodwill may not be depreciated.

**Relief for Losses.** The general rule is that losses may be carried forward for five years and deducted from income without limit. No carryback is possible.

#### **D. Other Significant Taxes**

The following table summarizes other significant taxes.

<b>Nature of Tax</b>	<b>Rate (%)</b>
Value-added tax (VAT), on the sale of products and most services and on imported goods	
Standard rate	22
Rate on basic foodstuffs and pharmaceuticals	10
Net worth tax, on corporate net worth, computed using values used for tax purposes; up to 50% of this tax may be credited against corporate income tax	
Banks and credit card corporations	2.8
Others	1.5
Social security contributions, on salaries and wages; imposed on	
Salaries and wages up to US\$1,700; paid by	
Employer; standard rate	12.625
Employee	18.125
Salaries and wages exceeding US\$1,700; paid by	
Employer	5.125
Employee	3.125

#### **E. Miscellaneous Matters**

**Foreign-Exchange Controls.** Uruguay does not impose foreign-exchange controls. No restrictions are imposed on inbound or outbound investments. The transfer of profits and dividends, loan principal and interest, royalties and fees is unlimited. Non-residents may repatriate capital, together with accrued capital gains and retained earnings, subject to applicable withholding taxes and company law considerations (for example, the requirement that companies transfer a portion of their annual income to a reserve).

Import and export operations are transacted at a free rate determined by the market.

**Debt-to-Equity Rules.** No specific debt-to-equity rules apply in Uruguay.

## F. Treaty Withholding Tax Rates

The maximum withholding tax rates under Uruguay's double tax treaties are set forth below.

	Dividends %	Interest %	Royalties %
Germany	15	15	15 (a)
Hungary	15	15	15
Nontreaty countries	7 (b)	12	12 (b)

(a) For technical assistance payments, the rate is 10%.

(b) See Section B.

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*This chapter reflects the tax law as of 1 January 2007. At the time of writing, a new Uzbek Tax Code, which is effective from 1 January 2008, had just been adopted. The new code contains many significant tax changes. Because this chapter does not reflect the measures in the new code, readers should obtain updated information before engaging in transactions.*

## A. At a Glance

Corporate Profits Tax Rate (%)	10 (a)
Capital Gains Tax Rate (%)	10 (a)
Permanent Establishment Tax Rate (%)	10 (a)
Branch Profits Tax Rate (Additional Tax) (%)	10 (b)
Withholding Tax (%) (c)	
Dividends	10 (d)
Interest	10 (d)
Royalties from Patents, Know-how, etc.	20 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (f)

(a) This is the general corporate profits tax rate. For commercial banks, the rate is 17%.

(b) This tax is imposed on the taxable profits transferred abroad by permanent establishments after payment of the profits tax.

(c) The withholding taxes are considered to be final taxes.



- (d) The withholding tax is imposed on payments to Uzbek companies and individuals and to foreign companies without a permanent establishment in Uzbekistan.
- (e) The withholding tax is imposed on payments to foreign companies without a permanent establishment in Uzbekistan.
- (f) See Section C.

## B. Taxes on Corporate Income and Gains

**Corporate Profits Tax.** Most enterprises in Uzbekistan, including Uzbek companies with foreign participation, are subject to the general profits tax regime. Small businesses and retail and wholesale trading companies are subject to different regimes. Foreign companies that are deemed by the tax authorities to have a permanent establishment (PE) in Uzbekistan are taxable on profits derived from business activities of the PE in Uzbekistan. The definition of a PE in Uzbek legislation is somewhat similar to the definition of a PE in the model treaty of the Organization for Economic Cooperation and Development (OECD), with certain exceptions. However, the legislation regarding the taxation and treatment of PEs in Uzbekistan is undeveloped.

**Rates of Corporate Tax.** The regular corporate profits tax rate is 10%. This rate also applies to Uzbek enterprises with foreign participation and to PEs of foreign companies. For commercial banks, the profits tax rate is 17%.

PEs are also subject to a 10% tax on the repatriation of their profits after deduction of the corporate profits tax.

Foreign legal entities without a PE in Uzbekistan are subject to withholding tax on income derived from their activities in Uzbekistan. The following are the withholding tax rates.

Nature of Payment	Rate (%)
Dividends and interest	10
International communication and freight fees	6
Insurance premiums	10
Royalties, rent, management fees and fees for other services not connected with an Uzbek PE	20

**Capital Gains.** Capital gains are included in taxable profits and are subject to tax at the regular corporate tax rate. Capital losses are deductible only if they are incurred on fixed assets used in production for at least three years.

**Administration.** The tax year is the calendar year.

Tax declarations must be filed quarterly by the 25th day of the month following the reporting quarter and annually by 15 February of the year following the tax year. Companies must file financial statements together with the tax declarations. Companies with foreign participation must file the annual declaration by 25 March.

The final tax liability must be paid within five days after the deadline for filing the tax declarations. Quarterly estimates of the tax payable must be made by the fifth day of the first month of the quarter. Tax installment payments based on the estimates are required to be made by the 15th day of each month. Companies generating profits of less than 200 minimum monthly wages per reporting quarter (approximately US\$2,000) are subject to profits tax based on actual quarterly profits and are not required to pay installments of profits tax.

On written request, excess payments of tax must be refunded within a 30-day period or be offset against future tax liability. In practice, it is difficult to obtain refunds of overpayments of tax.

**Dividends.** Dividends, including those paid to domestic enterprises, are subject to a withholding tax at a rate of 10%. Dividends received by a legal entity and reinvested into the charter fund of the payer of the dividends are exempt from tax.

**Foreign Tax Relief.** Under the double tax treaties of Uzbekistan, a foreign tax credit is available for foreign tax paid on income earned abroad. The amount of the tax credited may not exceed the amount of tax that would have been accrued on this income at the rates in effect in Uzbekistan.

### C. Determination of Trading Income

**General.** Taxable profits are equal to the annual net profits disclosed in the company's Uzbek financial statements, as adjusted by the tax law. Financial statements must be prepared on an accrual basis and be supported by documentation. The following are the most significant items that are not deductible for tax purposes:

- Nonbusiness expenses;
- Entertainment, business travel and voluntary insurance expenses in excess of (low) statutory limits;
- Interest on overdue and deferred bank loans, nonbank loans, and certain long-term bank loans;
- Losses resulting from misappropriations of funds or assets;
- Audit expenses, if the audit was initiated by the owners of the entity;
- One-off bonuses to employees;
- Charitable donations;
- Litigation expenses; and
- Penalties.

**Special Deductions.** Taxable profits may be reduced by the following special deductions:

- Amounts reinvested for specified purposes such as reconstruction, expansion and development of production, and the installation of new facilities (less current depreciation), up to 30% of taxable profits; and
- Charitable donations of up to 1% of taxable profits.

**Provisions.** Banks may deduct loan loss provisions within the limits established by the Central Bank of the Republic of Uzbekistan.

**Tax Depreciation.** The following are the applicable straight-line depreciation rates in Uzbekistan.

<b>Assets</b>	<b>Rate (%)</b>
Buildings and structures	5
Trains, ships, airplanes, heat and electrical generating equipment, engines, pipelines and communication equipment	8
Furniture, production equipment, buses, trucks, trailers	15
Cars, computers and office equipment	20
All other assets	10

Intangible assets are amortized for tax purposes over the useful life of an asset, the life of the company or five years, whichever is less.

**Relief for Losses.** Tax losses can be carried forward for five years. However, the amount of losses carried forward that may be deducted each year is subject to a limit of 50% of taxable profits for the year. Losses incurred during a profits tax exemption period cannot be carried forward.

**Groups of Companies.** The tax law does not allow the offsetting of profits and losses among members of a tax group.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate
Value-added tax (VAT), on the supply of all goods and services, including imports, unless they are zero-rated or exempt	20%
Excise tax; imposed on an extensive number of specified goods produced in Uzbekistan or imported into Uzbekistan; goods subject to tax include oil and gas products, alcohol, tobacco, confectionery products, electronics, furniture and cars	Various
Property tax; imposed on the annual average depreciated value of fixed and intangible assets; land is exempt	3.5%
Infrastructure development tax; imposed on net (after-tax) profits	8%
Subsurface use tax; imposed on the extraction of natural resources; tax imposed on the sales price of extracted natural resources and on waste derived from the extraction or processing of natural resources	
Sales	0.4% to 30%
Waste	0.12% to 9%
Road Use Fund contribution; imposed on sales turnover, excluding VAT, and on purchases of motor vehicles	
General rate on turnover	1.5%
Turnover from transportation activities	2.5%
Purchases of cars	6%
Purchases of other vehicles	20%
Water use tax; rates per cubic meter	
Surface water	UZS 14.40 (approximately US\$0.0116)
Underground water	UZS 18.45 (approximately US\$0.0149)
Land tax; imposed at a fixed rate per hectare, which varies depending on the location, quality and purpose of the land plot; rate in Zone 7 of Tashkent	UZS 19,526,129 (approximately US\$15,747)
School Education Development contribution; imposed on sales turnover, excluding VAT	1%

<b>Nature of Tax</b>	<b>Rate</b>
Social fund contributions; foreign citizens are exempt	
Pension Fund; paid by	
Employers; imposed on sales, excluding VAT	0.7%
Employees (withheld from salaries of local employees)	2.5%
Unified Social Payment; payable by employers on the payroll of its local employees	24%
Contributions to individual accumulative pension accounts of citizens (maintained at Peoples Bank); payable by employers on salaries of employees; amounts of the contributions are deducted from the amounts of accrued individual income tax	1%

## **E. Foreign-Exchange Controls**

The currency in Uzbekistan is the Uzbek soum (UZS).

Uzbekistan imposes various foreign-exchange controls, including the following:

- Restrictions on purchases of foreign currencies, which are subject to the availability of foreign currencies in authorized banks;
- Mandatory sales of 50% of foreign-currency revenues of companies to their servicing banks;
- Mandatory exchange rates set weekly by the Central Bank of the Republic of Uzbekistan for accounting, reporting, tax and customs duty calculations;
- Strict control over payments in foreign currencies to parties outside Uzbekistan; and
- Limitations on the circulation of foreign currencies in Uzbekistan, and limitations on the domestic foreign currencies markets.

Uzbek resident individuals may freely export only up to the equivalent of US\$2,000 of foreign currency. Nonresident individuals may export any cash legally imported and supported by a customs declaration. These limits may be increased by amounts withdrawn from foreign-currency accounts in Uzbekistan if proper documentation is provided.

## **F. Treaty Withholding Tax Rates**

The following table lists the withholding rates under Uzbekistan's tax treaties.

<b>Payee resident in</b>	<b>Dividends (n) %</b>	<b>Interest (n) %</b>	<b>Royalties %</b>
Austria	15 (a)	10	5
Azerbaijan	10	10	10
Belarus	15	10	15
Belgium	15 (b)	10	5
Canada	15 (b)	10	10 (c)
China	10	10	10
Czech Republic	10	5	10
Finland	15 (b)	5	10 (d)
Georgia	15 (e)	10	10
Germany	15 (e)	5	5 (f)
Greece	8	10	8
India	15	15	15
Indonesia	10	10	10

Payee resident in	Dividends (n)	Interest (n)	Royalties
	%	%	%
Israel	10	10	10 (c)
Japan (g)	15	10	10 (h)
Kazakhstan	10	10	10
Korea (South)	15 (e)	5	5 (i)
Kyrgyzstan	5	5	15
Latvia	10	10	10
Lithuania	10	10	10
Luxembourg	15 (e)	10	5
Malaysia	10	10	10
Moldova	15 (a)	10	15
Netherlands	15 (e)	10	10
Pakistan	10	10	15
Poland	15 (j)	10	10
Romania	10	10	10
Russian Federation	10	10	0
Slovak Republic	10	10	10
Switzerland	15 (l)	5 (m)	5
Thailand	10	15 (k)	15
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	10	10	10
United Kingdom	10 (b)	5	5
Vietnam	15	10	15
Nontreaty countries	15	15	20

- (a) The rate is 5% if the beneficial owner of the dividends is a company that holds directly at least 10% of the payer of the dividends.
- (b) The rate is 5% if the recipient holds at least 10% of the voting shares of the payer.
- (c) A 5% rate applies to royalties paid for certain cultural works as well as for the use of, or the right to use, computer software or patents or for information concerning industrial, commercial or scientific experience (know-how).
- (d) The 10% rate applies to royalties paid for trademarks or certain cultural works. A 0% rate applies to royalties for the use of, or the right to use, computer software, patents, designs or models, or plans. A 5% rate applies to royalties paid for the use of, or the right to use, secret formulas or processes, or for information concerning industrial, commercial or scientific experience (know-how).
- (e) The rate is 5% if the recipient holds at least 25% of the voting shares of the payer.
- (f) A 3% rate applies to royalties paid for the use of, or the right to use, copyrights of scientific works, patents, trademarks, designs or models, plans, or secret formulas or processes, as well as for the disclosure of industrial, commercial, or scientific knowledge.
- (g) These are the withholding tax rates under the USSR-Japan treaty, which is honored by Uzbekistan.
- (h) A 0% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including motion picture films.
- (i) The rate is 2% for the use of, or the right to use, industrial, commercial, or scientific equipment.
- (j) The rate is 5% if the recipient holds at least 20% of the voting shares of the payer.
- (k) The rate is 10% for interest received by financial institutions, including insurance companies.
- (l) The rate is 5% if the beneficial owner of the dividends is a company that holds directly at least 20% of the payer of the dividends.
- (m) A 0% rate applies to interest with respect to the following: loans made, guaranteed or insured by the government of the other contracting state or an instrumentality or agency thereof; sales on credit of industrial, commercial or scientific equipment; sales on credit of merchandise between enterprises; and bank loans.
- (n) The domestic withholding tax rate for dividends and interest in Uzbekistan is 10%. Consequently, the withholding tax rate of 15% for dividends and interest under certain treaties does not apply to payments made by Uzbek companies.

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(Country Code 58)

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Corporate Income Tax Rate (%)	34 (a)
Capital Gains Tax Rate (%)	34 (a)
Branch Tax Rate (%)	34 (a)
Withholding Tax (%)	
Dividends	34/50/60 (b)
Interest	
Paid to Residents	
Individuals	3 (c)
Corporations	5 (d)
Paid to Nonresidents	
Individuals	34 (e)
Corporations	34 (f)
Royalties	
Paid to Residents	2 (g)
Paid to Nonresidents (h)	
Individuals	34 (i)
Corporations	34 (j)
Professional Fees	
Paid to Residents	
Individuals	3 (c)
Corporations	5 (d)
Paid to Nonresidents	34 (k)
Rent of Immovable Property	
Paid to Residents	
Individuals	3 (c)
Corporations	5 (d)
Paid to Nonresidents	
Individuals	34
Corporations	34 (l)
Rent of Movable Goods	
Paid to Residents	
Individuals	3 (c)
Corporations	5 (d)
Paid to Nonresidents	
Individuals	34

Corporations	5
Technical Assistance	
Paid to Residents	2
Paid to Nonresidents (m)	
Individuals	34 (n)
Corporations	34 (o)
Technological Services	
Paid to Residents	2
Paid to Nonresidents (p)	
Individuals	34 (q)
Corporations	34 (r)
Sales of Shares (s)	
Sales by Residents	
Individuals	3 (c)
Corporations	5 (d)
Sales by Nonresidents	
Individuals	34
Corporations	5
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) This is the maximum progressive rate, which applies to income exceeding 3,000 tax units. Effective from 12 January 2007, the value of a tax unit is Bs. 37,632. For further details, see Section B. Petroleum companies and income from petroleum-related activities are taxed at a rate of 50%. Mining royalties and transfers of such royalties are subject to tax at a rate of 60%.
- (b) For details, see Section B.
- (c) The withholding tax applies to payments over Bs. 3,136,003. The tax is imposed on the payment minus Bs. 94,080.
- (d) This withholding tax applies to payments over Bs. 25,000.
- (e) The withholding tax is imposed on 90% of the gross payment. Consequently, the effective withholding tax rate is 30.6% (90% x 34%).
- (f) In general, the withholding tax rate is determined under Tariff No. 2 (see Section B), which provides for a maximum tax rate of 34%. It is applied to 95% of the gross payment. Interest paid to foreign financial institutions that are not domiciled in Venezuela is subject to withholding tax at a flat rate of 4.95%.
- (g) For residents, royalties are considered to be part of ordinary income.
- (h) Royalties paid to nonresidents are taxed on a deemed profit element, which is 90% of gross receipts.
- (i) Because royalties paid to nonresidents are taxed on a deemed profit element (see footnote (h) above), the effective withholding tax rate is 30.6% (90% x 34%).
- (j) The withholding tax rate is determined under Tariff No. 2, which provides for a maximum tax rate of 34%. Because royalties paid to nonresidents are taxed on a deemed profit element (see footnote (h) above), the maximum effective withholding tax rate is 30.6% (90% x 34%).
- (k) Professional fees paid to nonresidents are taxed on a deemed profit element, which is 90% of gross receipts. Consequently, the effective withholding tax rate is 30.6% (90% x 34%).
- (l) The withholding tax rate is determined under Tariff No. 2, which provides for a maximum tax rate of 34%.
- (m) Payments to nonresidents for technical assistance are taxed on a deemed profit element, which is 30% of gross receipts.
- (n) Because payments to nonresidents for technical assistance are taxed on a deemed profit element (see footnote (m) above), the effective withholding tax rate is 10.2% (30% x 34%).
- (o) The withholding tax rate is determined under Tariff No. 2, which provides for a maximum tax rate of 34%. Because payments to nonresidents for technical assistance are taxed on a deemed profit element (see footnote (m) above), the maximum effective withholding tax rate is 10.2% (30% x 34%).
- (p) Payments to nonresidents for technological services are generally taxed on a deemed profit element, which is 50% of gross receipts.
- (q) Because payments to nonresidents for technological services are taxed on a deemed profit element (see footnote (p) above), the effective withholding tax rate is 17% (50% x 34%).



- (r) The withholding tax rate is determined under Tariff No. 2, which provides for a maximum tax rate of 34%. Because payments to nonresidents for technological services are taxed on a deemed profit element (see footnote (o) above), the maximum effective withholding tax rate is 17% (50% x 34%).
- (s) This tax applies to transfers of shares of corporations domiciled in Venezuela that are not traded on national stock exchanges. The withholding tax rates are applied to the sale price.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Companies domiciled in Venezuela are subject to income tax on their net annual income from Venezuelan and foreign sources. Companies organized in Venezuela are deemed to be domiciled in Venezuela. In addition, Venezuelan permanent establishments of foreign companies are also considered to be domiciled in Venezuela. However, only income attributable to a permanent establishment is taxable in Venezuela.

**Rates of Corporate Income Tax.** Domestic corporations and branches of foreign corporations are subject to the corporate income tax rates of Tariff No. 2, which are progressive and are expressed in tax units. Effective from 12 January 2007, the value of a tax unit is Bs. 37,632. The Venezuelan Budget Law may change the value of the tax unit each year. The following are the corporate income tax rates provided in Tariff No. 2.

Taxable Income		Rate %
Exceeding Tax Units	Not Exceeding Tax Units	
0	2,000	15
2,000	3,000	22
3,000	—	34

Net income arising from mining and related activities is taxed under Tariff No. 2. Petroleum companies and income from petroleum-related activities, such as transportation and exploitation, are taxed at a rate of 50%. Mining royalties and transfers of such royalties are subject to tax at a rate of 60%.

Interest paid to foreign financial institutions that are not domiciled in Venezuela is subject to a 4.95% withholding tax.

**Capital Gains.** Capital gains are not taxed separately, but are taxable as business profits. For the computation of gains from sales of shares, the tax basis is zero if such shares had been received as a result of a dividend paid with new shares of the payer of the dividend.

**Administration.** Companies must file an annual income tax return, self-assess and pay any resulting balance of tax due, within three months after the end of their fiscal year.

Companies must make estimated tax payments during its fiscal year.

**Dividends.** Dividends paid by Venezuelan companies and profits remitted by permanent establishments of foreign companies to the countries of their home offices are taxable to the extent that “income before taxes” exceeds its “net taxable income.” For this purpose, “income before taxes” is the financial income before the tax reconciliation; and “net taxable income” is the resulting income subject to tax after the tax reconciliation. The tax reconciliation is the procedure for determining the income tax liability.

However, the tax does not apply to remittances paid by permanent establishments of foreign companies if the permanent establishment can prove that the excess amount is reinvested in Venezuela for at least five years.

The tax is withheld at source. The applicable rate depends on the business of the payer of the dividends. For dividends paid by hydrocarbon or mining companies subject to the 50% or 60% rates of corporate income tax (see *Rates of Corporate Income Tax* above), the dividend tax rate is the corporate tax rate applicable to the company. For dividends paid by other companies, the dividend tax rate is 34%.

**Foreign Tax Relief.** A credit is granted for income taxes paid on foreign-source income, up to the amount of Venezuelan tax payable on such income.

### C. Determination of Trading Income

**General.** Corporate tax is based on the annual net taxable accounting profits calculated in accordance with generally accepted accounting principles, subject to certain adjustments for nontaxable income and nondeductible expenses defined by law.

To determine the net taxable income, deductions are subtracted from gross income. In general, most expenses, including cost of production, are deductible, provided that they are normal and necessary for the earning of the income.

Under reconciliation rules, the determination of the Venezuelan and foreign-source income is made separately (two baskets). The reconciliation rules include detailed measures for the allocation of allowances and deductions to the two baskets.

**Inventories.** Inventories may be valued using any method in accordance with generally accepted accounting principles. The method chosen must be applied consistently. Because of tax indexation (see *Tax Indexation* below), inventory is effectively valued using the last-in, first-out (LIFO) method, adjusted for inflation.

**Tax Indexation.** Companies must apply an annual inflation adjustment. A company carries out this adjustment by adjusting its non-monetary assets, some of its nonmonetary liabilities and its equity to reflect the change in the consumer price index from the preceding year. These adjustments affect the calculation of depreciation and cost of goods sold. The net effect of these adjustments is recorded in an inflation adjustment account and is added to taxable income or allowed as a deduction.

Effective for tax years beginning after 22 October 1999, the tax indexation rules apply only to the reconciliation of Venezuelan-source income. Therefore, foreign-source nonmonetary assets and liabilities are not subject to tax indexation.

**Provisions.** Provisions for inventory obsolescence and accounts receivable are not deductible; amounts are deductible only when inventories or accounts receivable are effectively written off.

**Depreciation.** In general, acceptable depreciation methods are the straight-line and the units-of-production methods. The declining-balance method and accelerated depreciation are not accepted.

Venezuelan law does not specify depreciation rates. If the estimated useful life of an asset is reasonable, the depreciation is accepted. Estimated useful lives ranging from 3 to 10 years are commonly used.

**Relief for Tax Losses.** Operating losses may be carried forward for three years. No carryback is permitted.

Losses in the foreign-source basket (see *General* above) may not offset Venezuelan-source income. Such foreign-source losses may be carried forward three years to offset foreign-source income only.

Losses attributable to tax indexation may be carried forward one year.

#### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax (VAT), imposed on goods and services, including imports; the National Executive may exonerate from tax for up to five years acquisitions of goods and services; the law provides an indexation system for input VAT during the preoperational period for enterprises engaged in certain industrial activities; input VAT generated during the preoperational phase of industrial projects intended primarily for export is refunded	9
Municipal tax; business activity tax, usually based on gross receipts or sales; rate varies depending on the industrial or commercial activity	0.5 to 10
Tax on Financial Operations; imposed from November 2007 through December 2008 on legal entities (with or without juridical status) domiciled in Venezuela; taxable events include debits in bank accounts, securities and custody deposits, payments in cash or securities, transfers of title or custody of securities, cross-border payments and cancellation of debts without the mediation of the Venezuelan financial system; tax base is the total amount of the operations; the tax is withheld by the Venezuelan financial institutions if it results from transactions carried out through the mediation of the financial system; if the transaction is carried out without the mediation of the Venezuelan financial system, the taxpayer must self-assess and file a biweekly tax return with the payment of the balance of tax due	1.5
Social security contributions, on monthly salary of each employee, up to five minimum salaries; paid by	
Employer	9/10/11
Employee	4
National Institute of Cooperative Education; contributions required if employer has five or more employees; paid by	

Nature of Tax	Rate (%)
Employer, on total employee remuneration	2
Employee, on profit share received, if any, from employer at year-end	0.5
Housing policy contributions, on the monthly normal salary (under the Labor Law, the normal salary consists of all remuneration regularly received by an employee) of each employee; paid by	
Employer	2
Employee	1
Unemployment and training contributions, on the monthly salary of each employee, up to five minimum salaries; paid by	
Employer	2
Employee	0.5

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Under the foreign-exchange control system in Venezuela, the purchase and sale of currency in Venezuela is centralized by the Central Bank of Venezuela. This limits foreign-currency trade in Venezuela and other transactions.

**Debt-to-Equity Rules.** For fiscal years beginning on or after 16 February 2007, a new law disallows deductions to companies for interest payments to related parties domiciled abroad if the average of the companies' debts (owed to related and unrelated parties) exceeds the average amount of their fiscal equity for the respective fiscal year.

**Transfer Pricing.** Under transfer-pricing rules, cross-border income and expense allocations in transactions with related parties are subject to analysis and special filings. The rules contain a list of related parties and provide a list of acceptable transfer-pricing methods.

**Controlled Foreign Corporations.** Under controlled foreign corporation (CFC) rules, income derived by a CFC (as defined) domiciled in a low income tax jurisdiction is taxable to its Venezuelan shareholders. The tax authorities have issued a list of low income tax jurisdictions.

## F. Treaty Withholding Tax Rates

	Dividends %	Interest (a) %	Royalties %
Austria	5/15 (c)	4.95/10 (m)	5
Barbados	5/10 (e)	5/15 (o)	10 (s)
Belgium	5/15 (b)	10	5
Brazil (kk)	10/15 (j)	15	15 (t)
Canada	10/15 (h)	10	5/10 (u)
China	5/10 (d)	5/10 (o)	10
Cuba	10/15 (h)	10	5
Czech Republic	5/10 (c)	10	12 (v)
Denmark	5/15 (b)	5	5/10 (w)
France	0/5/15 (k)	5	5
Germany	5/15 (c)	5	5
Indonesia	10/15 (l)	10	10/20 (x)
Iran	5/10 (c)	0/5 (r)	5 (y)

	<b>Dividends</b>	<b>Interest (a)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Italy	10	10	7/10 (z)
Korea	5/10 (d)	5/10 (o)	5/10 (aa)
Kuwait	5/10 (d)	5	20
Mexico (kk)	5	4.95/10/15 (q)	10 (s)
Netherlands	0/10 (f)	5	5/7/10 (cc)
Norway	5/10 (d)	5/15 (o)	9/12 (dd)
Portugal	10	10	10/12 (dd)
Russian Federation (kk)	10/15 (i)	5/10 (o)	10/15 (ee)
Spain	0/10 (f)	4.95/10 (n)	5
Sweden	5/10 (b)	10	7/10 (ff)
Switzerland	0/10 (f)	5 (gg)	5
Trinidad and Tobago	5/10 (b)	15	10
United Kingdom	0/10 (g)	5	5/7 (hh)
United States	5/15 (d)	0/4.95/10 (p)	0/5/10 (bb)
Nontreaty countries	34/50/60 (ii)	4.95/34 (jj)	34 (jj)

- (a) Under Venezuelan domestic law, a reduced withholding tax rate of 4.95% applies to interest paid to financial institutions not domiciled in Venezuela.
- (b) The 5% rate applies to dividends paid to a parent company that owns at least 25% of the capital of the payer of the dividends. Under the Denmark and Sweden treaties, to benefit from the 5% rate, the recipient of the dividends must have direct control of at least 25% the voting shares of the payer of the dividends. The higher rate applies to other dividends (portfolio dividends).
- (c) The 5% rate applies if the beneficial owner of the dividends is a company that owns at least 15% of the capital of the payer of the dividends. Under the treaties with Austria, Czech Republic and Iran, to benefit from the 5% rate, the beneficial owner of the dividends must have direct control of at least 15% of the capital of the payer of the dividends. The higher rate applies to other dividends (portfolio dividends).
- (d) The 5% rate applies if the beneficial owner of the dividends is a company that owns at least 10% of the capital of the payer of the dividends. Under the treaties with China, Korea and Norway, to benefit from the 5% rate, the beneficial owner of the dividends must have direct control of at least 10% of the capital of the payer of the dividends. The higher rate applies to other dividends.
- (e) The 5% rate applies if the beneficial owner of the dividends is a company that owns directly at least 5% of the capital of the payer of the dividends. The higher rate applies to other dividends.
- (f) The 0% rate applies to dividends paid to certain recipients who own at least 25% of the voting shares of the payer of the dividends. Under the treaty with Switzerland, to benefit from the 0% rate, the recipient of the dividends must have direct control of at least 25% of the voting shares of the payer of the dividends. The higher rate applies to other dividends.
- (g) The 0% rate applies if the beneficial owner of the dividends is a company that directly controls at least 10% of the capital of the payer of the dividends. The 10% applies to other dividends.
- (h) The 10% rate applies if the beneficial owner of the dividends is a company that owns at least 25% of the capital of the payer of the dividends. Under the treaty with Cuba, to benefit from the 10% rate, the beneficial owner of the dividends must have direct control of at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (i) The 10% rate applies if the beneficiary of the dividends is a company that owns at least 10% of the capital of the payer of the dividends and if it has an investment in the payer of at least US\$100,000. The 15% rate applies to other dividends.
- (j) The 10% rate applies if the beneficiary of the dividends is a company that controls at least 20% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (k) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 10% of the payer of the dividends. The 15% rate applies if the beneficiary of the dividends is a resident of Venezuela that receives from a company resident in France dividends that would give

rise to a tax credit (*avoir fiscal*). For dividends received by a resident of France, the recipient has a right to a payment from the French Treasury in an amount equal to the *avoir fiscal*. The 5% rate applies in all other cases.

- (l) The 10% rate applies if the beneficiary of the dividends is a company that controls directly at least the 10% voting power of the distributing company. The 15% rate applies to other dividends.
- (m) The 4.95% rate applies to interest paid to banks. The 10% rate applies to other interest payments.
- (n) The 4.95% rate applies to interest paid to financial institutions. The 10% rate applies to other interest payments.
- (o) The 5% rate applies to interest paid to banks. The higher rate applies to other interest payments.
- (p) The 0% rate applies to interest paid to the Eximbank, Federal Reserve Bank, Private Investment Corporation, Foreign Trade Bank, Central Bank of Venezuela and Venezuelan Investment Fund. The 4.95% rate applies to interest paid to financial institutions or insurance companies. The 10% rate applies to other interest payments.
- (q) The 4.95% rate applies to interest paid to banks or insurance companies. The 10% rate applies if the beneficial owner of the interest is not one of the entities mentioned in the preceding sentence and if either of the following additional conditions is satisfied: the interest is paid by banks; or the interest is paid on bonds or other credit securities that are traded regularly and substantially on a recognized securities market. The 15% rate applies to other interest payments.
- (r) The following interest payments are exempt: interest paid to the government of the other contracting state, or a local authority or central bank of such state; interest paid for the sale on credit of industrial, commercial or scientific equipment; and interest on bank loans. The 5% rate applies to other interest payments.
- (s) The 10% rate also applies to technical assistance fees.
- (t) The 15% rate applies to royalties related to copyrights, trademarks, know-how, literary, artistic or scientific works, or films. A protocol to the treaty provides that payments for technical assistance services are treated as royalties and are therefore also subject to the 15% rate.
- (u) The 5% rate applies to the following: copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or other artistic works (but not including royalties for motion picture films or works on film or videotape or other means of reproduction for use in connection with television broadcasting); and royalties for the use of, or the right to use, computer software, patents or information concerning industrial, commercial or scientific experience (but not including royalties paid in connection with rental or franchise agreements) if the payer and the beneficial owner of the royalties are not related persons. The 10% rate applies to other royalties.
- (v) The 12% rate also applies to technical assistance fees.
- (w) The 5% rate applies to technical assistance fees resulting from the rendering of technical, managerial or consultancy services if such services make available technical knowledge, experience, skills, know-how or processes. The 10% rate applies to the following: royalties derived from payments received as consideration for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films, patents, trademarks, designs or models, plans, and secret formulas or processes; or for information concerning industrial, commercial or scientific experience.
- (x) The 10% rate applies to payments for technical assistance. The 20% rate applies to royalties.
- (y) This rate applies to royalties and to amounts paid for technical assistance services.
- (z) The 7% rate applies to copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or other artistic works (but not including royalties with respect to motion picture films, or works on film, videotape or other means of reproduction for use in connection with television broadcasting); and royalties for the use of, or the right to use, computer software or patents or for information concerning industrial, commercial or scientific experience (but not including royalties paid in connection with rental or franchise agreements) if the payer and the beneficial owner of the royalties are not related persons. The 10% rate applies to other royalties.
- (aa) The 5% rate applies to royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment. The 10% rate applies to other royalties.

- (bb) The 0% rate applies to royalties paid for technical services, scientific, geological or technical studies, engineering works, consulting or supervision services, if the recipient does not have a permanent establishment. The 5% rate applies to royalties paid for industrial, commercial or scientific equipment. The 10% rate applies to royalties paid for the following: patents, designs or models; plans or secret formulas or processes; industrial, commercial or scientific know-how; trademarks; and copyrights with respect to literature, art or science, motion pictures, or movies and tapes for radio or television broadcast.
- (cc) The 5% rate applies to payments for the following: patents, designs or models, plans, or secret formulas or processes; the use of, or the right to use, industrial, commercial, or scientific equipment; or information concerning industrial, commercial or scientific experience. The 7% rate applies to amounts paid for trademarks or trade names. The 10% rate applies to amounts paid for copyrights of literary, artistic or scientific works, including cinematographic films or tapes for television or broadcasting.
- (dd) The lower rate applies to payments for technical assistance. The 12% rate applies to royalties.
- (ee) The 10% rate applies to technical assistance fees, which are all payments in consideration for the rendering of technical, managerial or consultancy services, if such services make available technical knowledge, experience, skills, know-how or processes. The 15% rate applies to royalties.
- (ff) The 10% rate applies to royalties related to literary, artistic or scientific works, or films. The 7% rate applies to other royalties.
- (gg) This is the general rate. Certain special rules apply.
- (hh) The 5% rate applies to royalties for patents, trademarks, designs or models, plans, or secret formulas or processes, or for information (know-how) concerning industrial, commercial or scientific experience. The 7% rate applies to royalties for copyrights of literary, artistic or scientific works, including cinematographic films, and films or tapes for radio or television broadcasting.
- (ii) For details, see Section B.
- (jj) See Section A.
- (kk) This treaty has been signed, but it has not yet been ratified.

Venezuela has signed other tax treaties that cover only air and maritime transportation.

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## VIETNAM

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*Because of the rapidly changing economic situation in Vietnam, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Enterprise Income Tax Rate (%)	28 (a)
Capital Gains Tax Rate (%)	28 (b)
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	0
Interest	10
Royalties	10
Payments to Foreign Contractors	– (c)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (d)

- (a) Petroleum and mining companies are subject to tax at a rate ranging from 28% to 50%. Such companies may also be subject to a natural resource royalty tax. For details, see Section B.
- (b) Gains derived from sales of fixed assets are treated as taxable profits and are subject to tax at the normal corporate income tax rate. Gains derived from sales of shares in foreign-invested enterprises by foreign investors are subject to a tax rate of 28%.
- (c) For details, see Section B.
- (d) See Section C.

**B. Taxes on Corporate Income and Gains**

**Enterprise Income Tax.** For the purposes of corporate taxation, enterprises are classified as companies with foreign-owned capital, branches of foreign companies, foreign contractors or domestic companies. Companies with foreign-owned capital are entities that have been issued a license by the Ministry of Planning and Investment (MPI) or by a body authorized by the MPI to issue licenses, which allows them to operate in one of the following forms:

- Limited liability company with one member;
- Limited liability company with two or more members; and
- Shareholding companies.

Branches of foreign companies may engage in business activities in Vietnam if they are legally licensed to operate in Vietnam in accordance with Vietnam laws.



Foreign contractors are companies and individuals doing business in Vietnam, but not through a license granted by the MPI or by one of the other bodies authorized by the MPI to issue licenses.

Domestic companies may be state-owned or privately owned.

### **Rates of Corporate Tax**

*Companies with Foreign-Owned Capital.* Companies with foreign-owned capital are generally subject to income tax at the standard rate of 28%.

The preferential tax rates of 10%, 15% or 20%, which are discussed below, may be available to eligible foreign investment projects in industries or locations that are encouraged by the government.

The 10% rate may apply to the following:

- Activities that are included in the list of projects in which investment is encouraged and are located in the regions with especially difficult socioeconomic conditions;
- Infrastructure development of industrial zones and export-processing zones; and
- Newly established export processing enterprises engaged in manufacturing.

The 15% rate may apply to the following:

- Activities that are included in the list of projects in which investment is encouraged and are located at the regions with difficult socioeconomic conditions;
- Investment in regions with especially difficult socioeconomic conditions;
- Service activities in export-processing zones; and
- Manufacturing activities in industrial zones.

The 20% tax rate may apply to the following:

- Activities included in the list of projects in which investment is encouraged;
- Investment in the regions with difficult socioeconomic conditions; and
- Industrial zone enterprises engaged in the service sector.

Typically, the preferential period is 15 years for enterprises under the 10% regime, 12 years for enterprises under the 15% regime and 10 years for enterprises under the 20% regime. After the expiration of the preferential period, the 28% rate applies.

Under the Petroleum Law, a 50% rate applies to projects that involve the survey, exploitation and refining of oil and gas or the exploitation of precious and rare natural resources. “Encouraged projects” qualify for a 28% rate. An additional natural resource royalty tax is imposed on the projects subject to the Petroleum Law at rates ranging from 1% to 40% (4% to 25% for crude oil). However, for joint ventures, no resource royalty tax is payable if the natural resources are supplied as capital by the Vietnamese party.

*Branches of Foreign Companies.* Branches of foreign companies are subject to income tax at a rate of 28%.

*Foreign Contractors.* Foreign contractors are subject to the Enterprise Income Tax (EIT) Law and the Value-Added Tax (VAT) Law (see Section D) under a special tax regime. Under this regime, EIT

and VAT are withheld at various deemed rates from the gross turnover of foreign contractors not using the Vietnamese Accounting System (VAS). Foreign contractors using the VAS must register as VAT taxpayers and pay EIT based on their net income.

*Domestic Companies.* Domestic companies are subject to tax at a rate of 28% under the EIT Law.

**Tax Incentives.** Projects meeting certain criteria may qualify for tax incentives, which vary according to the normal income tax rate applicable to the project. These incentives consist of a tax holiday for a specified number of years beginning in the “first year of taxable profit,” followed by a 50% tax reduction for a specified number of years. For purposes of the tax incentives, the “first year of taxable profit” is the first year an enterprise derives a profit before offsetting losses from prior years.

Projects in economic zones that are especially encouraged by the government may qualify for an exemption from EIT for a period of up to four years beginning with the first profitable year and a subsequent 50% reduction of EIT for a period of up to nine years.

Enterprises investing in new production lines, business expansion, technology renewal, improvement of the environment or production capacity increases qualify for an exemption from EIT for a period of up to four years beginning with the first profitable year and a subsequent 50% reduction of EIT for a period of up to seven years.

Depending on the nature of the project, beginning with the year in which they first earn a profit, BOT projects may be exempt from income tax for four years and may benefit from a 50% income tax reduction for the following nine years.

**Capital Gains.** Capital gains derived from sales of fixed assets are treated as taxable income.

Gains derived from sales of shares in foreign-invested enterprises by foreign investors are subject to tax at a rate of 28%. However, if the foreign investment is indirect, the sale of the shares is subject to a presumptive tax of 0.1% of the total value of the shares. For this purpose, a foreign investment is considered to be indirect if the foreign investor does not participate in the management of the company and if the investor makes the investment in the shares through the opening of a trading account with a commercial bank or a securities company.

**Administration.** Enterprises with foreign investment normally use the calendar year as their tax year unless the Ministry of Finance (MOF) has approved a different tax year.

Enterprises must file quarterly provisional income tax returns and pay their quarterly income tax due within 30 days after the last day of the quarter. Enterprises must file a final income tax return and pay any balance of income tax due within 90 days after the end of the tax year.

Income tax payments with respect to quarterly tax notices are payable as stated in the notices. Enterprises must make their final tax payment when they file their annual corporate income tax return.

A fraudulent return or a return filed with the intent to avoid tax is subject to a penalty of up to three times the amount involved. Late payments of tax are subject to a fine of 0.05% of the unpaid amount for each day that the payment is delayed.

**Dividends.** The remittance tax is abolished, effective from 1 January 2004. As a result, dividends and branch remittances are no longer subject to withholding tax.

**Withholding Taxes on Interest and Royalties.** A 10% withholding tax is imposed on interest paid under loan contracts signed on or after 1 January 1999.

A final withholding tax at a rate of 10% is imposed on royalties paid to Vietnamese and foreign legal entities with respect to technology transfers and licensing.

**Foreign Tax Relief.** Vietnam has signed tax treaties with several countries that provide relief from double taxation (see Section F).

### C. Determination of Taxable Income

**General.** The taxable income of an enterprise with foreign-owned capital is the income shown in the financial statements, subject to certain adjustments. Taxable income includes income derived by branch operations from business and other activities.

Companies with foreign-owned capital may deduct expenses related to the operation of the company, provided the expenses are in accordance with guidelines issued by the MOF. Under these guidelines, the following expenses may be deducted if they are supported by appropriate evidence:

- Depreciation in accordance with the guidelines of the MOF (see *Tax Depreciation* below).
- Raw materials, fuel, energy, goods and tools used in production, trading or the performance of services.
- Salaries, which must be supported by labor contracts or labor collective bargaining agreements.
- Scientific and technology research expenses and other expenses relating to innovation and the improvement of technology.
- Maintenance, packaging and transportation.
- Social and health insurance fund contributions, and payments to women under the laws governing such funds.
- Management company expenses approved by the MPI or a delegated authority.
- Taxes, levies and other charges in the nature of taxes, excluding income tax and remittance tax (see Section B).
- Insurance policies with Vietnamese insurance companies or other insurance companies licensed in Vietnam that insure business risks and assets.
- Printing and publishing expenses, warehouse, office and laboratory maintenance expenses, employee safety expenses, environmental protection expenses, recruitment and training expenses, security expenses, and fire prevention and fighting expenses.
- Meeting expenses of the management board.
- House and land rentals.
- Rent paid under leases of assets including machinery and equipment.
- Repairs of fixed assets and payments of royalties.

- Provisions for price reductions in inventory, doubtful debts and reduction in value of shares held by the enterprise.
- Termination payments.
- Costs of outsourced services, including legal services, design, establishment and protection of trademarks, and other services.
- Business travel expenses, uniform expenses and donations and sponsorships paid to the Communist Party, labor unions and certain other associations prescribed by the government.
- Interest on loans, including loans from sources other than banks and financial institutions, not exceeding 120% of the amount calculated based on the lending rate published by commercial banks at the time of the loan agreement.
- Marketing, advertising and promotion expenses, as well as other expenses not specified above, not exceeding 10% of permitted expenses. However, the 10% limitation for certain advertising and promotion (A&P) expenses was relaxed with respect to the following:
  - Market research;
  - Display or introduction of products at exhibition and trade fairs, including free samples;
  - Promotional products and services accompanied by sales, capped at the value of the sales;
  - Discounts for quick payments, including cash rebates for bulk purchases; and
  - A&P expenses incurred for clients.

The relaxation of the limitation in the 2005 tax year did not eliminate the 10% limitation for all other tax years.

**Inventories.** Inventory valuation should be consistent with the accounting principles and standards selected by the company and approved by the MOF. No specific guidelines have been established by the tax authorities.

**Tax Depreciation.** Depreciation of fixed assets is normally computed using the straight-line method. The MOF has issued guidelines setting forth the minimum and maximum years for depreciation of various assets, but companies may apply to the MOF for permission to use different time periods. The following are the minimum and maximum years of depreciation for certain categories of assets.

<b>Asset</b>	<b>Years</b>
Intangible assets	20*
Buildings and factories	5 to 50
Tools and machinery	3 to 15
Transportation vehicles	6 to 30
Other fixed assets	2 to 40

\* Depreciation period for a land-use right corresponds to the period of the lease, up to a maximum of 20 years.

Depreciation at rates exceeding those allowed by the MOF is not deductible for tax purposes.

**Relief for Losses.** An enterprise with foreign-owned capital, a domestic enterprise and a branch of a foreign company may carry forward losses incurred in their operations to the following five years if these losses are shown in an annual tax return that has been finalized with the tax office.

Carrybacks of losses are not allowed.

**Groups of Companies.** Companies with foreign-owned capital may adopt consolidated filing for units and dependent establishments operating in different areas of Vietnam. In calculating tax due, these enterprises must apply the relevant tax rate applicable to each operating unit or establishment. Otherwise, consolidated returns are not allowed.

#### D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on all goods and services consumed in and imported into Vietnam, including goods and services subject to special consumption tax, except for non-taxable items	
General rate	10
Exports of goods and services	0
Certain goods and services, such as water supply, agricultural goods, medical goods and teaching aids	5
Special consumption tax, on the taxable value of imported or domestically produced cigarettes, beer, spirits, motor vehicles, fuel; air conditioners and various services including casinos, horse and motor racing, golf courses and various places of entertainment; for domestically produced goods, taxable value equals the manufacturer's selling price, divided by one plus the tax rate; for imported goods, taxable value equals the Cost, Insurance and Freight (CIF) value plus import duty	15 to 100
Social and health insurance contributions, on salaries (generally applicable to Vietnamese employees only); paid by Employer	
Social insurance	15
(The rate of 15% consists of a 3% contribution to the maternity and illness fund, a 1% contribution to the labor and professional accident fund and an 11% contribution to the pension and death fund. The contribution to the pension and death fund will increase by one percentage point every 2 years beginning in 2010 until it reaches the rate of 14%. The contribution is based on the salary and other allowances of the employees as provided in the labor contract but not exceeding 20 times the minimum salary.)	
Health insurance	2
Employee	
Social insurance	5
(The contribution will increase by one percentage point every 2 years beginning in 2010 until it reaches the rate of 8%.)	
Health insurance	1

Nature of Tax	Rate (%)
Freight tax, on income derived by ships from the transport of goods from a Vietnamese port to a foreign port or to another Vietnamese port	3
Land rent (land-use tax); imposed annually for the use of land; tax base is calculated by multiplying the amount of square meters of the land by land price rates, which vary by location; the higher land price rates apply to land in Hanoi, Ho Chi Minh City and other urban locations	0.25 to 2

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** Enterprises with foreign-owned capital must open accounts denominated in a foreign currency or the Vietnamese dong (VND) at a bank located in Vietnam and approved by the State Bank of Vietnam (SBV). All foreign-exchange transactions, such as payments or overseas remittances, must be in accordance with policies set by the SBV.

Enterprises with foreign-owned capital and foreign parties may purchase foreign exchange from a commercial bank to meet the requirements of current transactions or other permitted transactions, subject to the bank having available foreign exchange.

The government may guarantee foreign currency to especially important investment projects or assure the availability of foreign currency to investors in infrastructure facilities and other important projects.

**Transfer Pricing.** The Vietnamese tax authorities may recalculate the purchase or sales price to reflect the domestic or foreign market price. The implementing circular for transfer pricing took effect on 27 January 2006. The methods permissible under the regulation closely resemble the methods provided for by the Organization for Economic Cooperation and Development (OECD) guidelines. The following are the permissible methods:

- Comparable uncontrolled price method;
- Resale price method;
- Cost-plus method;
- Profit-split method; and
- Transaction net margin method.

## F. Treaty Withholding Tax Rates

The withholding rates under Vietnam's double tax treaties are listed in the following table.

	Dividends %	Interest %	Royalties %
Australia	10	10	10
Bangladesh	5	5	5
Belarus	15	10	15
Belgium	5/10/15 (a)	10	15
Bulgaria	15	10	15
Canada	5/10/15 (a)	10	7.5/10
China	10	10	10
Cuba	5/10/15 (a)	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Czech Republic	10	10	10
Denmark	5/10/15 (a)	10	5/15
Finland	5/10/15 (a)	10	10
France	7/10/15 (a)	– (b)	10
Germany	5/10/15 (a)	10	7.5/10
Hungary	10	10	10
Iceland	10/15 (a)	10	10
India	10	10	10
Indonesia	15	15	15
Italy	5/10/15 (a)	10	7.5/10
Japan	10	10	10
Laos	10	10	10
Luxembourg	5/10/15 (a)	10	10
Malaysia	10	10	10
Mongolia	10	10	10
Myanmar	10	10	10
Netherlands	5/10/15 (a)	10	5/10/15
Norway	5/10/15 (a)	10	10
Pakistan	15	15	15
Philippines	10/15 (a)	15	15
Poland	10/15 (a)	10	10/15
Romania	15	10	15
Russian Federation	10/15 (a)	10	15
Singapore	5/7/12.5 (a)	10	5/15
South Korea	10	10	5/15
Spain	7/10/15 (a)	10	10
Sweden	5/10/15 (a)	10	5/15
Switzerland	7/10/15 (a)	10	10
Taiwan	15	10	15
Thailand	15	10/15	15
Ukraine	10	10	10
United Kingdom	7/10/15 (a)	10	10
Uzbekistan	15	10	15
Nontreaty countries	0	10	10

(a) The rates vary depending on the percentage of the payer's capital that is owned by the recipient of the dividends.

(b) The treaty with France does not cover the taxation of interest.

Vietnam has signed double tax treaties with Algeria, North Korea, Seychelles and Sri Lanka, but these treaties have not yet been ratified.

## ZAMBIA

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*At the time of writing, the 2008 budget had not yet been announced. Because the budget may contain tax changes affecting companies, readers should obtain updated information before engaging in transactions.*

**A. At a Glance**

Corporate Income Tax Rate (%)	15 to 40 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	15 to 40 (a)
Withholding Tax (%) (b)	
Dividends	15 (c)
Interest	15 (d)
Royalties	15 (e)
Management Fees	15 (f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (g)

(a) For details, see Section B.

(b) These withholding taxes apply to payments to resident and nonresident companies and individuals.

(c) For resident and nonresident companies and individuals, this is a final tax. Zambian-incorporated companies may offset the withholding tax imposed on dividends received from other Zambian-incorporated companies against withholding tax payable on their own distributions of dividends.

(d) This rate applies to interest paid to companies. This is a final tax for nonresident companies. Resident companies may credit the withholding tax against their income tax.

(e) For individuals and nonresident companies, this is a final tax. Resident companies may credit the withholding tax against their income tax.

(f) This is a final withholding tax applicable to nonresident companies and individuals. Resident companies and individuals include management fees in their taxable income and do not suffer withholding tax on these fees.

(g) See Section C.

**B. Taxes on Corporate Income and Gains**

**Corporate Income Tax.** Resident and nonresident companies are subject to tax on their income derived from Zambian sources. Resident companies are also subject to tax on profits derived from a business carried on partly inside, and partly outside, Zambia. A company is considered resident in Zambia if it is incorporated in Zambia or if the central management and control of the company's business or affairs are exercised in Zambia.



**Tax Rates.** The following are the standard corporate tax rates.

Source	Rate (%)
Farming	15
Export of nontraditional products	15
Manufacturing	35
Banking	
Profits up to K 250 million	35
Profits exceeding K 250 million	40
Copper and cobalt mining	30
Royalties	35*
Trading and other sources	35

\* A 15% final withholding tax is imposed on royalties paid to nonresidents.

A tax incentive is available to companies that are newly listed on the Lusaka Stock Exchange. A two percentage point reduction of each corporate tax rate is granted to such companies. In addition, a reduction of five percentage points (for a total reduction of seven percentage points) of each corporate tax rate is available to companies with more than 33% of their shares owned by Zambians. The incentive applies for one year only, and a company may claim the incentive only once.

**Capital Gains.** Capital gains are not subject to tax in Zambia, but depreciation recaptured for tax purposes (see *Tax Depreciation* below) is taxable at the regular corporate tax rates. In addition, a property transfer tax is imposed (see Section D).

**Administration.** The Zambia Revenue Authority administers the Income Tax Act. The tax year runs from 1 April to 31 March. Annual tax returns must be filed by 30 September of the following tax year.

Companies must make four advance payments of tax, which are due on 14 July, 14 October, 14 January and 14 April. The installments are based on an estimate of the tax due for the year. The balance of tax due must be paid by the due date for filing the annual tax return.

A company may apply to the Commissioner-General to use an accounting year other than the standard tax year. However, the due dates described above for filing returns and advance payments of tax also apply to companies with an accounting year-end other than 31 March.

**Dividends.** A 15% withholding tax is imposed on dividends paid. For resident and nonresident companies and individuals, this is a final tax.

Zambian-incorporated companies may offset the withholding tax imposed on dividends received from other Zambian-incorporated companies against withholding tax payable on their own distributions of dividends.

Dividends received from foreign companies are not subject to tax.

No special rules apply to dividends received from subsidiaries.

**Foreign Tax Relief.** A foreign tax credit is available to resident companies for foreign taxes paid on foreign income subject to Zambian tax. The amount of the tax credit is the lower of the Zambian tax payable on the foreign income and the foreign tax paid on the same income.

### C. Determination of Trading Income

**General.** Taxable income is the net profit reported in the companies' financial statements, adjusted by certain tax law provisions.

Expenses are deductible to the extent they are incurred wholly and exclusively for the purposes of the business.

Companies engaged in fishing or farming for two consecutive tax years may elect to calculate taxable income or loss for the two tax years by averaging the taxable income earned or loss incurred in each of the two tax years. This election must be filed with the Commissioner-General before the end of the tax year following the second consecutive tax year. The election is not allowed in certain circumstances.

**Inventories.** Inventories are valued at the lower of cost or net realizable value.

**Provisions.** Specific identifiable provisions are allowed for tax purposes, but general provisions are not allowed.

**Tax Depreciation.** Industrial buildings qualify for an initial allowance of 10%. The initial allowance is not deductible from the cost of the assets. Annual wear-and-tear allowances, which are calculated using the straight-line method, are available for the following assets.

Asset	Rate (%)
Industrial buildings	
Low-cost housing (buildings used to provide housing for the purposes of a business with a cost per unit of up to K 10 million [US\$2,000])	10
Others	5
Commercial buildings	2
Implements and plant and machinery used in farming, tourism and manufacturing	50
Other implements and plant and machinery, and commercial vehicles	25
Other vehicles	20

The amount of depreciation claimed on an asset may be recaptured when the asset is sold. In general, the amount recaptured is the excess of the sales price over the tax value, but it is limited to the amount of depreciation claimed.

**Relief for Losses.** Tax losses may be carried forward five years to offset income from the same source. In general, losses may not be carried back.

**Groups of Companies.** There are no provisions for filing consolidated returns.

### D. Other Significant Taxes

The following table summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax, on any supply of goods and services, other than an exempt supply, made in Zambia and on taxable imports; exports are zero-rated	17.5

Nature of Tax	Rate (%)
Provident Fund (social security system) contributions on monthly wages; maximum contribution of K 206,843 per month for both employers and employees	
Employer	5
Employee	5
Property transfer tax, on transfers of shares of companies incorporated in Zambia, and land, buildings and structures located in Zambia	3
Royalty, on the extraction, production and selling of ore	3

### E. Foreign-Exchange Controls

The Zambian currency is the kwacha (K). The exchange rate of the kwacha against foreign currencies fluctuates.

Zambia does not impose foreign-exchange controls.

### F. Treaty Withholding Tax Rates

	Dividends	Interest	Royalties	Management Fees
	%	%	%	%
Canada	15	15	15	0
Denmark	15	10	15	15
Finland	5/15	15	5/15	0
France	15	10	15	0
Germany	5/15	10	10	0
India	5	10	10	0
Ireland	0	0	0	0
Italy	5/15	10	10	0
Japan	0	10	10	0
Kenya	15	15	15	15
Netherlands	5	10	10	0
Norway	15	10	10	15
South Africa	15	15	15	15
Sweden	5/15	10	10	15
Switzerland	15	0	0	0
Tanzania	15	15	15	15
Uganda	15	15	15	15
United Kingdom	5/15	10	10	0
Nontreaty countries	15	15*	15	15

\* This 15% rate applies to payments to companies.

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**A. At a Glance**

Corporate Income Tax Rate (%)	30 (a)(b)
Capital Gains Tax Rate (%)	20 (c)
Capital Gains Withholding Tax Rate (%)	5/10/15 (d)
Branch Tax Rate (%)	30 (a)(b)
Withholding Tax (%)	
Dividends	15/20 (e)
Interest	
Received by Residents	
Paid By Banks, Other Financial Institutions and Building Societies	20 (f)
Accruing from Treasury Bills, Bankers’ Acceptances and Discounted Instruments	
Traded by Financial Institutions	20 (g)

Received by Nonresidents	10 (h)
Royalties	20 (h)
Remittances	20 (i)
Fees	20 (j)
Contract Payments	10 (k)
Branch Remittance Tax	0 (l)
Net Operating Losses (Years)	
Carryback	0
Carryforward	6 (m)

- (a) Special tax rates apply to certain enterprises. For details, see Section B.
- (b) An AIDS levy of 3% is imposed on income tax payable (excluding tax on income subject to special rates).
- (c) Tax is imposed on capital gains on sales of immovable property and marketable securities.
- (d) A capital gains withholding tax is imposed on the proceeds from sales of marketable securities and immovable property. The rates of the withholding tax are 5% for listed marketable securities, 10% for unlisted marketable securities and 15% for immovable property. This tax is withheld from the sales proceeds and is offset against any capital gains tax assessed on the transaction.
- (e) The 15% rate applies to dividends paid by companies listed on the Zimbabwe Stock Exchange to resident individuals. The 20% rate applies to other dividends paid to resident individuals and to dividends paid to nonresidents.
- (f) This is a final withholding tax imposed on residents. The following types of interest are exempt from income tax and withholding tax: interest paid by the People's Own Savings Bank; and interest on building society Class C (tax-free) shares.
- (g) This is a final tax imposed on the income to maturity of treasury bills, bankers' acceptances and discounted instruments traded by financial institutions that are purchased by resident investors who are not financial institutions. The tax is imposed at the time of disposal or maturity of the instrument.
- (h) These withholding taxes are imposed on nonresidents. The income is also subject to income tax unless a tax treaty provides that the withholding tax is a final tax.
- (i) This is a final tax imposed on remittances transferred from Zimbabwe by nonresidents for technical, managerial, administrative or consulting expenditures incurred outside Zimbabwe in connection with a trade carried on in Zimbabwe.
- (j) This tax is imposed on payments by residents to nonresidents of technical, managerial, administrative, consulting or directors' fees.
- (k) This tax is withheld from all payments made under contracts for more than Z\$500,000 to resident suppliers who cannot provide a tax clearance certificate.
- (l) Only remittances of head office expenditures are subject to a 20% withholding tax. See footnote (i).
- (m) Mining losses are ring fenced to specific locations and may be carried forward indefinitely.

## B. Taxes on Corporate Income and Gains

**Corporate Income Tax.** Income tax is levied on all amounts (other than capital) received or accrued from a Zimbabwean source, less expenditures not of a capital nature incurred in the production of income or for business purposes. Certain specific types of income are exempt.

Foreign interest and dividends accruing to residents of Zimbabwe are deemed to be from a source within Zimbabwe. A resident corporation is one that is managed and controlled in Zimbabwe.

**Rates of Corporate Tax.** Resident and nonresident companies are subject to income tax at a rate of 30%. Resident companies are also subject to income tax at the rate of 20% on gross foreign dividends.

An AIDS levy of 3% is imposed on income tax payable (excluding tax on income subject to special rates).

*Special Tax Rates.* Special tax rates apply to the following enterprises.

Type of Enterprise	Rate (%)
Approved new manufacturing operations in designated growth point areas (first five years)	10
New projects begun in growth point areas on or after 1 April 1991 for the construction of roads, bridges, sanitation facilities or water-distribution facilities (first five years)	15
Licensed investors operating in export-processing zones	
First five years	0
Thereafter	15
Mining operations	15
Build-own-operate-transfer (BOOT) and build-operate-transfer (BOT) projects	
Years 1 through 5	0
Years 6 through 10	15
Years 11 through 15	20
Year 16 and thereafter	30*
Industrial park developers	
First five years	0
Thereafter	15
Tourist facilities with 60% or more of their receipts in foreign currency	20
Tourist development zone operations	
First five years	0
Thereafter	15
Manufacturing enterprises exporting 50% or more of their production	20

\* The 3% AIDS levy is also payable.

Interest received by residents on deposits with Zimbabwean financial institutions and building societies is exempt from income tax, but it is subject to a final withholding tax at a rate of 20%. A final withholding tax at a rate of 20% is also imposed on the income to maturity of treasury bills, bankers' acceptances and discounted instruments traded by financial institutions that are purchased by resident investors who are not financial institutions. The tax is imposed at the time of disposal or maturity of the instrument. No deduction for expenses and losses is permitted from interest subject to the final taxes described above. Other interest received by residents is taxable at the regular corporate income tax rate and may be offset by expenses and losses.

*Tax Exemptions.* Export-processing zones have been designated in the major business centers and border areas of Zimbabwe. Operations of licensed investors in these zones benefit from a 0% rate or an exemption with respect to the following taxes:

- Income tax on profits (0% rate for five years and 15% rate for subsequent years);
- Capital gains tax;
- Nonresident and resident shareholders taxes on dividends;
- Nonresident taxes on interest, remittances, fees and royalties;
- Customs duty; and
- Value-added tax on goods and services (refundable).

Foreign entities that provide finance for development in Zimbabwe are exempt from income tax and capital gains tax.

**Capital Gains.** Capital gains derived from sales of immovable property and marketable securities issued by listed and unlisted companies are taxed at a rate of 20%. Gains are determined by deducting from the selling price the cost plus an allowance based on the increase in the Consumer Price Index from the date the cost was incurred to the date of disposal. Capital allowances recaptured for income tax purposes (see Section C) are excluded from gains.

Withholding tax is imposed on the gross proceeds derived from sales of marketable securities and immovable property. The withholding tax rates are 5% for listed marketable securities, 10% for unlisted marketable securities and 15% for immovable property. This tax is offset against any capital gains tax assessed on the transaction.

**Administration.** Zimbabwe's tax year ends on 31 December. Tax returns must be filed within 30 days of the date a return form is issued (usually in March). The Revenue Authority prefers that companies use accounting years ending in September, October, November or December of a given tax year. Self assessment will be introduced for specified taxpayers. These taxpayers must submit returns within four months after the end of the 2008 tax year.

Corporate tax must be paid during the relevant tax year. Provisional payments equaling specified percentages of the estimated total tax payable are due on the following dates: 25 March (10%); 25 June (25%); 25 September (30%); and 20 December (35%).

Penalties can be imposed for late or incorrect returns, and late payments are subject to interest at the monthly average rate of interest on treasury bills.

Withholding taxes that are not considered final taxes are credited to the income tax imposed on the income from which the tax has been withheld.

**Dividends.** Dividends received by a resident corporation from another resident corporation are exempt from withholding tax and income tax. A 15% withholding tax is imposed on dividends paid by companies listed on the Zimbabwe Stock Exchange to resident individuals. A 20% withholding tax is imposed on other dividends paid to resident individuals and on dividends paid to nonresidents. Dividends received from foreign companies are subject to tax at a rate of 20%.

**Foreign Tax Relief.** If relief is not provided by a treaty, a unilateral tax credit is given for foreign withholding tax. The tax credit may not exceed the Zimbabwean income tax imposed on the income.

## **C. Determination of Trading Income**

**General.** Income tax is levied on all income from a source in Zimbabwe or deemed to be in Zimbabwe. The following types of interest are exempt from income tax: People's Own Savings Bank interest; and interest from certain building society investments. Interest on deposits with financial institutions and income from treasury bills, bankers' acceptances and discounted instruments traded by financial institutions is subject to a final withholding tax at a rate of 20%. For further details regarding this withholding tax, see Section B.

Expenses incurred for business purposes are generally deductible. The following expenses are not deductible:

- Expenses incurred in the production of exempt income or income not derived or deemed to be derived from Zimbabwe;
- Pension fund contributions in excess of Z\$900,000 per employee;
- Costs in excess of Z\$25,000,000 per year for attending trade conventions and trade missions;
- Rent or repairs for premises not occupied for purposes of trade;
- Payments in restraint of trade;
- Entertainment expenses;
- Total payments under a lease of a passenger motor vehicle (as defined) in excess of Z\$10,000,000;
- Interest relating to excess debt in a company with a debt-to-equity ratio that exceeds 3 to 1; and
- General administration expenses charged by a holding or subsidiary company or foreign head office that exceed 0.75% of expenditure incurred during the preproduction phase or 1% of tax-deductible expenditure incurred after the beginning of trading or the production of income.

Donations of up to Z\$25,000,000 per year for the construction, maintenance or operation of hospitals and schools run by the state, local authorities or religious organizations and donations of up to Z\$25,000,000 per year to approved research institutions are deductible.

A double tax deduction is allowed for specified export market development expenditure.

Amounts contributed to approved scientific and educational bodies for industrial research or scientific experimental work are also deductible for tax purposes.

**Inventories.** The only acceptable inventory valuation methods for tax purposes are cost, using the first-in, first-out (FIFO) method, and market value.

**Provisions.** In general, only specific provisions are deductible for tax purposes.

**Tax Depreciation.** Depreciation charged in the financial statements is not deductible; instead, a 50% special initial allowance is granted on the cost of certain assets. A wear-and-tear allowance of 25% of cost is granted in the following two years. The special initial allowance is granted on the cost of construction or additions to fixed assets other than land and certain buildings and also on the purchase price of movable property. If the special initial allowance is not elected, a wear-and-tear allowance at varying rates is granted on these assets. The following are the rates and the methods of computing this wear-and-tear allowance for certain assets.

Asset	Method	Rate (%)
Commercial buildings	Straight-line	2.5
Industrial buildings*	Straight-line	5
Office equipment	Declining-balance	10
Motor vehicles	Declining-balance	20
Plant and machinery	Declining-balance	10

\* Toll roads and toll bridges declared to be such under the Toll Roads Act are included in this category.



The maximum depreciable cost for passenger motor vehicles (as defined) acquired on or after 1 January 2007 is Z\$10,000,000.

All capital allowances are subject to recapture on the disposal of assets on which such allowances have been claimed. Any amounts recaptured are subject to tax at the regular corporate tax rate. The full sale price of mining assets on which capital allowances have been granted is subject to tax at the corporate tax rate for mining.

**Relief for Losses.** Mining losses are ring fenced to specific locations and may be carried forward indefinitely. Other losses may be carried forward for six years. Losses may not be carried back.

**Groups of Companies.** Zimbabwean law does not contain measures for filing consolidated returns or for relieving losses within a group.

Transfers of assets in a merger or group reconstruction between companies under common control may be made at the tax value for both income tax and capital gains tax purposes. On the subsequent disposal of such assets outside the group, the gain or loss to the seller is computed with reference to the cost to the first transferor within the group.

## D. Other Significant Taxes

The table below summarizes other significant taxes.

Nature of Tax	Rate (%)
Value-added tax; on the supply and importation of goods and services; certain items are exempt, including, financial services, medical services, fuel, tobacco, educational or training services, long-term residential leases and transport of passengers by road or rail; suppliers of qualifying goods and services with an annual value in excess of Z\$2,400,000,000 must register	
Standard rate	15
Cellular telecommunications services	22.5
Exports, prescribed drugs and services supplied by designated tourist facilities to tourists that are paid for with foreign currency, as well as certain other items	0
Banking institution levy; imposed on profits shown in financial statements; a credit is granted for loans to small or medium-sized enterprises	5

Presumptive taxes on different bases and at various rates are imposed on informal traders, small-scale miners, and transport and driving school operators who had not submitted returns before specified dates. The specified dates are 31 December 2005 for transport and driving school operators and 12 September 2005 for other potential presumptive taxpayers.

## E. Miscellaneous Matters

**Foreign-Exchange Controls.** The government still imposes broad controls over all foreign-exchange transactions. Strict controls are still imposed on transactions by individuals. Nonresident individuals with total blocked funds of up to Z\$5 may remit them through normal banking channels. Specific applications to the Reserve Bank of Zimbabwe through commercial banks are required for all remittances of this nature.

Foreign investment of up to 35% in primary issues of shares and bonds is permitted if it is funded by inward transfers of foreign exchange. Purchases by foreign investors in the secondary market are not permitted, but disposals on that market are allowed.

Foreign borrowings require the approval of the Reserve Bank of Zimbabwe. The approvals are granted based on the merits of the borrowings in accordance with guidelines set by the External Loans Coordinating Committee. The guidelines provide that foreign borrowings may be approved only if they are used to fund productive, export-oriented ventures that have the potential to generate sufficient foreign currency for loan principal and interest repayments without recourse to the foreign-currency market. Under the guidelines, foreign loans may not be obtained to purchase shares, existing companies or real estate, or to fund private consumption, personal loans and retail inventories.

With the approval of the authorities, 100% of after-tax normal trading profits may be remitted to nonresident shareholders within one year of the accrual of the profits.

After-tax dividends and capital gains derived from investments on the Zimbabwe Stock Exchange are fully remittable. Companies and individuals may apply to open foreign-currency accounts (FCAs) with offshore funds or funds derived from export earnings. Expenditure from FCAs is subject to Reserve Bank of Zimbabwe approval. The bank prioritizes such approvals based on the extent to which the foreign-currency expenditure directly affects the payer's ability to export goods and services.

The following actions must be taken with respect to foreign currency received for exports:

- 35% must be converted to local currency at the official rate, which is fixed at Z\$30 000 = US\$1; and
- 65% must be deposited in an FCA to fund approved expenditure.

Unused balances in FCA's are automatically converted to local currency at the official rate after 30 days.

All other foreign-currency receipts must be converted to local currency at the official rate of exchange through authorized dealers.

Foreign currency converted to local currency can be invested overnight at 800% interest which effectively increases the exchange rate realized on each conversion to nine times the official rate of exchange. For U.S. dollars, the effective rate is increased to Z\$270,000 = USD\$1.

Resident individuals who have FCAs may use funds (other than from export earnings) in the accounts to invest on the stock exchange, in money market funds or in unlisted companies that meet certain criteria. All capital gains, dividends and interest derived from such investments may be reinvested in the FCAs.

All payments for imports and other offshore payments, such as dividends and fees, must now be applied for through a local commercial bank and funded through an FCA or foreign currency purchased in the interbank foreign exchange market.

**Debt-to-Equity Rules.** Debt-to-equity rules apply to all companies (see Section C).

## F. Treaty Withholding Tax Rates

The rates shown in the table reflect the lower of the treaty rate and the rate under domestic tax law.

	<b>Dividends (a)</b>	<b>Interest</b>	<b>Royalties</b>	<b>Fees</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Bulgaria	10	10	10	10
Canada	10	10	10	10
Congo (b)	0	0	0	0
France	10	10	10	10
Germany	10	10	7.5	7.5
Iran (b)	5	5	5	5
Kuwait	0/5	0	10	0
Malaysia	10	10	10	10
Mauritius	10	10	15	20
Netherlands	10	10	10	10
Norway	15	10	10	10
Poland	10	10	10	20
Serbia and Montenegro	5	10	10	10
South Africa	20	10	20	20
Sweden	15	10	10	10
United Kingdom	5	10	10	10
Nontreaty countries	20	10	20	20

- (a) Except for the Iran treaty, the reduced treaty rates apply only if the recipient is a company that controls at least 25% of the voting power of the payer company.
- (b) The entry into force of this treaty has not yet been published.

## FOREIGN CURRENCIES

The following list sets forth the names and symbols for the currencies of countries discussed in this book.

<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Albania	Lek	ALL
Angola	Kwanza	Kz
Argentina	Peso	AR\$
Aruba	Aruban Florin	Afl
Australia	Dollar	A\$
Austria	Euro	€
Azerbaijan	Manat	MAN
Bahamas	Dollar	B\$
Bahrain	Dinar	BD
Barbados	Dollar	BD\$\$
Belarus	Ruble	Br
Belgium	Euro	€
Bermuda	Dollar	\$
Bolivia	Boliviano	Bs
Botswana	Pula	P
Brazil	Real	R\$
British Virgin Islands	U.S. Dollar	US\$
Brunei Darussalam	Dollar	B\$
Bulgaria	Leva	BGN
Cameroon	Franc CFA	FCFA
Canada	Dollar	C\$
Cayman Islands	Dollar	\$
Chile	Peso	Ch\$
China, People's Republic of	Renminbi Yuan	RMB
Colombia	Peso	Col\$
Congo	Franc CFA	FCFA
Costa Rica	Colon	¢
Côte d'Ivoire	Franc CFA	FCFA
Croatia	Kuna	HRK
Cyprus	Euro	€
Czech Republic	Koruna	CZK
Denmark	Krone	DKK
Dominican Republic	Peso	RD\$
Ecuador	U.S. Dollar	US\$
Egypt	Pound	LE
El Salvador	Colon	SVC\$
Equatorial Guinea	Franc CFA	FCFA

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<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Estonia	Kroon	EEK
Ethiopia	Birr	Birr
European Monetary Union	Euro	€
Fiji	Dollar	F\$
Finland	Euro	€
France	Euro	€
Gabon	Franc CFA	FCFA
Georgia	Lari	GEL
Germany	Euro	€
Ghana	Cedi	¢
Greece	Euro	€
Guam	U.S. Dollar	US\$
Guatemala	Quetzal	GTQ
Guernsey	Pound	£
Guinea	Guinea Franc	FG
Honduras	Lempira	L
Hong Kong	Dollar	HK\$
Hungary	Forint	HUF
Iceland	Krona	ISK
India	Rupee	Rs.
Indonesia	Rupiah	Rp
Iraq	New Dinar	NID
Ireland	Euro	€
Isle of Man	Pound	£
Israel	New Shekel	NIS
Italy	Euro	€
Jamaica	Dollar	J\$
Japan	Yen	¥
Jersey	Pound	£
Jordan	Dinar	JD
Kazakhstan	Tenge	Tenge
Kenya	Shilling	KSH
Korea	Won	W
Kuwait	Dinar	KD
Laos	Kip	LAK
Latvia	Lats	LVL
Lebanon	Pound	LL
Lesotho	Maloti	M
Liechtenstein	Swiss Franc	CHF
Lithuania	Litas	LTL
Luxembourg	Euro	€
Macau	Pataca	MOP
Macedonia	Denar	MKD

<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Madagascar	Ariary	MGA
Malawi	Kwacha	K
Malaysia	Ringgit	RM
Maldives	Rufiyaa	Mrf
Malta	Euro	€
Mauritania	Ouguiya	MRO
Mauritius	Rupee	Rs.
Mexico	Peso	P
Moldova	Leu	MDL
Morocco	Dirham	DH
Mozambique	Metical	MT
Namibia	Dollar	N\$
Netherlands	Euro	€
Netherlands Antilles	Guilder	ANG
New Zealand	Dollar	NZ\$
Nicaragua	Cordoba	C\$
Nigeria	Naira	N
Northern Mariana Islands	U.S. Dollar	US\$
Norway	Krone	NOK
Oman	Rial	RO
Pakistan	Rupee	Rs.
Palestinian Authority	None	—
Panama	Balboa	B/.
Paraguay	Guarani	G
Peru	New Sol	S/.
Philippines	Peso	P
Poland	Zloty	PLN
Portugal	Euro	€
Puerto Rico	U.S. Dollar	US\$
Qatar	Riyal	QR
Romania	Leu	RON
Russian Federation	Ruble	RUR
Rwanda	Franc	Frw
Saudi Arabia	Riyal	SR
Senegal	Franc CFA	FCFA
Serbia	Dinar	CSD
Seychelles	Rupee	SR
Singapore	Dollar	S\$
Slovak Republic	Koruna	SKK
Slovenia	Euro	€
South Africa	Rand	R
Spain	Euro	€
Sri Lanka	Rupee	Rs.

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<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Sweden	Krona	SEK
Switzerland	Franc	CHF
Syria	Pound	SYP
Taiwan	Dollar	NT\$
Tanzania	Shilling	TSHS
Thailand	Baht	Baht
Trinidad and Tobago	Dollar	TTS
Tunisia	Dinar	TD
Turkey	Lira	TRY
Turkmenistan	Manat	TMM
Uganda	Shilling	U Sh
Ukraine	Hryvnia	UAH
United Arab Emirates	Dirham	AED
United Kingdom	Pound	£
United States	Dollar	\$
U.S. Virgin Islands	U.S. Dollar	US\$
Uruguay	New Peso	N\$
Uzbekistan	Soum	UZS
Venezuela	Bolivar	Bs.
Vietnam	Dong	VND
Zambia	Kwacha	K
Zimbabwe	Dollar	Z\$

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