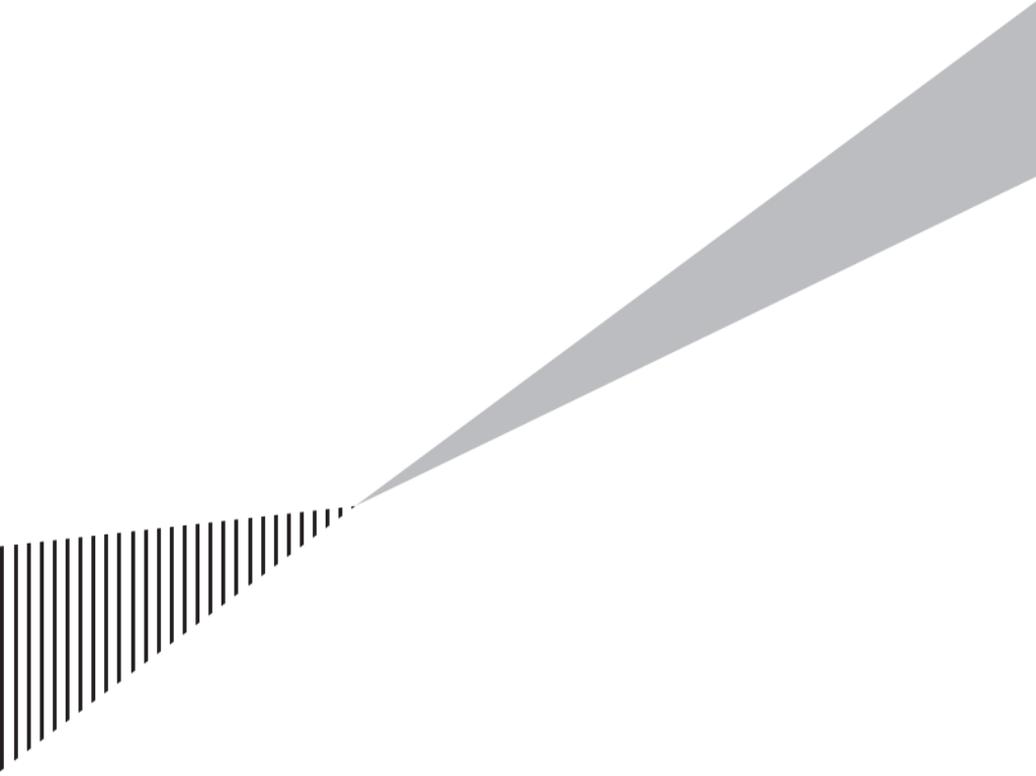


# The 2012 worldwide corporate tax guide



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## Preface

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The *Worldwide Corporate Tax Guide* is part of a suite of premier tax guides published by Ernst & Young. The others are the *Worldwide VAT, GST and Sales Tax Guide*, *The Global Executive* and, new this year, the *Estate and Inheritance Tax Guide*. Each represents thousands of hours of tax research, and within the limits of annual publications, they are the most reliably comprehensive guides available.

Since the global financial crisis, many governments have reduced their corporate taxes, some several times. Meanwhile, they have also enacted many corporate tax subsidies and penalties for various industries. This churning of corporate tax law makes a current, detailed guide like this one all the more valuable.

The content of the *Worldwide Corporate Tax Guide* is straightforward. Chapter by chapter from Afghanistan to Zimbabwe, we summarize corporate tax systems in 154 jurisdictions. The content is current on 1 January 2012, with exceptions noted.

Each chapter begins with contact information for the key people in that country's Ernst & Young offices. 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

We then lay out the facts about the jurisdiction's corporate taxes, beginning with an at-a-glance summary. With some variation, the topics covered are taxes on corporate income and gains, determination of trading income, other significant taxes, miscellaneous matters (including foreign-exchange controls, debt-to-equity rules, transfer pricing, controlled foreign companies and anti-avoidance legislation) and treaty withholding tax rates.

At the back of the book, readers will find a list of contacts for emerging markets and a list of the names and symbols for all national currencies.

Find electronic versions of the *Worldwide Corporate Tax Guide* and other tax publications on ey.com and mobile versions at various app stores.

Ernst & Young  
April 2012

Although this publication is intended to be comprehensive, it should not be regarded as offering advice or a complete explanation of the tax matters referred to and is subject to changes in the law and other applicable rules. Also, this publication does not provide guidance on the local application of the law in practice. Local publications of a more detailed nature are frequently available, and readers are advised to consult their local Ernst & Young professionals for further information.

#### **About Ernst & Young's Tax services**

Your business will only achieve its true potential if you build it on strong foundations and grow it in a sustainable way. At Ernst & Young, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our global teams of talented people bring you technical knowledge, business experience and consistent methodologies, all built on our unwavering commitment to quality service — wherever you are and whatever tax services you need.

Effective compliance and open, transparent reporting are the foundations of a successful tax function. Tax strategies that align with the needs of your business and recognize the potential of change are crucial to sustainable growth. So we create highly networked teams who can advise on planning, compliance and reporting and maintain effective tax authority relationships — wherever you operate. You can access our technical networks across the globe to work with you to reduce inefficiencies, mitigate risk and improve opportunity. Our 29,000 tax people, in over 140 countries, are committed to giving you the quality, consistency and customization you need to support your tax function. It's how Ernst & Young makes a difference.

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# Ernst & Young's Global Tax Desk network

Ernst & Young's Global Tax Desks program has 30 years of significant investment in building an extensive network. It consists of one centrally led team of over 200 professionals spanning approximately 45 countries. The desks represent their home countries in other jurisdictions and provide specialized services across several of our tax disciplines from hubs in the United States, Brazil, Europe, and Asia-Pacific and China. The Global Tax Desks offer clients a tremendous resource – accessible, timely and integrated tax-planning advice on cross-border investments, providing them worldwide with a forum for information and idea exchange as well as offering cross-disciplinary tax workshops for multinationals. Our Global Tax Desks can be contacted at the numbers listed below.

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## A. At a glance

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Business Receipts Tax Rate (%)	2/5/10 (a)
Withholding Tax (%) (b)	
Dividends	20 (b)
Interest	20 (b)
Royalties from Patents, Know-how, etc.	20 (b)
Commissions	20 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (c)

- (a) This tax is imposed on total gross revenue before deductions. It is a deductible expense in computing taxable income.
- (b) This withholding tax is considered a final settlement of the tax liability with respect to dividend income.
- (c) Losses can be generally carried forward in equal proportions to each of the following three years. Unrestricted loss carryforwards are allowed for specified companies.

## B. Taxes on corporate income and gains

**Corporate income tax.** Companies that are resident in Afghanistan are subject to tax on their worldwide income. Tax is levied on the total amount of income earned during the tax period.

**Tax rates.** The corporate income tax rate is 20%.

Certain types of income are subject to final withholding taxes. For information regarding these taxes, see *Withholding taxes*.

**Business receipts tax.** Business receipts tax (BRT) is imposed on total gross revenue before deductions. BRT is a deductible expense in computing taxable income for the same tax year. It is imposed at rates of 2%, 5% or 10% of the gross receipts, depending on the nature of the business and/or category of the receipt.

In addition, importers of goods are subject to BRT at a rate of 2% at the time of import. The Customs Office collects the BRT. This tax is treated as an advance payment against the BRT paid by the importer based on its receipts from the sale of goods.

The BRT return must be filed and BRT must be paid on a quarterly basis within 15 days after the end of the quarter.

BRT does not apply to the following categories of income:

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

**Fixed tax scheme.** For certain categories of income and persons, the Afghanistan Income Tax Law (AITL) provides for a fixed tax scheme under which taxpayers are required to pay a fixed tax during the year instead of income tax and BRT. The fixed tax applies to income received by importers and contractors that do not hold a business license in Afghanistan for the supply of goods, services transporters, entertainers and natural persons deriving business income below certain limits. The amount of the tax varies, depending on the category of income and the person deriving the income.

**Tax incentives.** Some of the significant tax incentives available in Afghanistan are described in the following paragraphs.

Income derived from the operation of aircraft under the flag of a foreign country and income derived by the aircraft's staff is exempt from tax if the foreign country grants a similar exemption to aircraft under the flag of Afghanistan and the aircraft's staff.

Organizations that are established under the laws of Afghanistan and operating exclusively for educational, cultural, literary, scientific or charitable purposes are exempt from income tax.

Income derived from agricultural or livestock production is not subject to income tax.

Scholarships, fellowships or grants for professional and technical training are exempt from income tax.

The above incentives are subject to a private ruling obtained from the Ministry of Finance (MoF) of the Government of Afghanistan.

**Capital gains.** Gains arising from the sale, exchange or transfer of capital assets, including depreciable assets, shares of stock and trades or businesses are included in taxable income. However, gains derived from the sale or transfer of movable or immovable property acquired by inheritance is not included in taxable income.

Legal persons transferring movable or immovable property must pay a 1% tax on the amount received or receivable with respect to the transfer of ownership of such property. The tax paid may be used as a credit against tax payable when the tax return is filed.

Losses incurred on the sale or exchange of capital assets used in a trade or business are deductible from the taxable income in the tax year of the sale or exchange if the gain from such sale or exchange would have been taxable.

Losses incurred on the sale or exchange of shares of stock may be offset only against gains from the sale or exchange of shares of stock in the same year. If the gains exceed the losses from such transactions, the excess is taxable. However, if the losses exceed the gains, the excess is not deductible.

### Administration

*Filing requirements.* Afghanistan follows the solar year as its tax year (that is, 21 March through the following 20 March). If a legal person wishes to use a 12-month period other than the solar period as its tax year, it may apply to the MoF in writing and provide the reasons for the change. The MoF may grant such application if it is justifiable.

The income tax return, together with the balance sheet, must be filed within three months after the end of the tax year.

*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 against the eventual tax liability of the taxpayer for the relevant year.

The following are the rates of significant withholding taxes under the Afghanistan income tax law.

<b>Type of payment</b>	<b>Rate (%)</b>
Rent for immovable property used for commercial, industrial and other economic purposes	10/15 (a)
Salaries and wages	2/10/20 (b)
Payments for imports by importers that have a business license	4 (c)
Payments to persons that have a business license for the providing of goods, material, construction and services under contracts to government agencies, municipalities, state entities, private entities and other persons	2

Type of payment	Rate (%)
Dividends	20 (d)
Interest	20 (d)
Royalties	20 (d)
Prizes	20 (b)
Rewards	20 (d)

- (a) The rate depends on the monthly rent.  
 (b) The rate depends on the monthly salary.  
 (c) The tax is calculated based on the cost of the imported goods including customs duty and is collected by the customs office where the custom duty is paid. Half of the tax (that is, 2% of the value of imports) may be offset against the BRT payable by the importer while the balance is treated as a tax credit against the tax liability for the year. See the discussion of the BRT in Section B.  
 (d) This is a final withholding tax.

*Interest and penalties.* A legal person that fails to file a tax return by the due date without reasonable cause may be subjected to additional income tax of AFN 500 per day.

In addition, if a person fails to pay the tax by the due date, penalties amounting to 0.1% of the tax per day may be imposed. If no tax is paid, an additional tax of 10% may be imposed in addition to the 0.1% penalty.

A person that is determined to have evaded income tax may be required to pay the income tax due and the following additional tax:

- In the first instance, additional tax of double the evaded tax
- In the second instance, additional tax of double the evaded tax and termination of the person's business activity by order of the court

A person that fails to withhold tax from payments without reasonable cause may also be subject to additional tax of 10%.

**Dividends.** A company paying a dividend must withhold tax at a rate of 20% of the gross amount. Dividends are regarded as Afghanistan-source if they are received from resident companies operating in Afghanistan.

If a branch in Afghanistan of a nonresident person pays or incurs an amount to the head office or any person connected to the nonresident person, that amount is also treated as a dividend.

Dividends paid in cash, from which tax has been deducted at source, are allowed as deductions for the payers of the dividends. However, such deductions are not allowed to branch offices in Afghanistan making payments of dividends to their head offices and other affiliates.

Dividends paid in the form of securities for shares or loans of a similar nature are not deductible from the income of corporations or limited liability companies.

**Foreign tax credit.** If a resident person derives income from more than one foreign country, proportionate foreign tax credit is allowed against income from each country.

### C. Determination of trading income

**General.** The determination of taxable income is generally based on the company's financial statements, subject to certain adjustments.

Business expenses incurred during a tax year or in one of the preceding three tax years are deductible for purposes of calculating taxable income.

**Inventories.** Inventory for a tax year is valued at the lower of cost or market value of the inventory on hand at the end of the year. All taxpayers engaged in manufacturing, trading, or other businesses must value inventories in accordance with the method prescribed by the MoF.

**Tax depreciation.** Depreciation of movable and immovable property (except agricultural land) used in a trade or business or held for the production of income is allowed as an expense. The total depreciation deductions for property may not exceed the cost of the property to the taxpayer.

A person is not entitled to claim depreciation for that part of the cost of an asset that corresponds to a payment for which the person failed to withhold tax.

Enterprises registered under the Law on Domestic and Foreign Private Investment in Afghanistan are entitled to a deduction for the depreciation of buildings and other depreciable assets over the following time periods:

- Buildings: four years
- Other depreciable assets: two years

Depreciation is calculated using the straight-line method, in equal proportions. However, if a depreciable asset is held by the enterprise for less than half of the year, depreciation is calculated and deducted for half of the year. If a depreciable asset is held for more than half of the year, depreciation is calculated and allowed for one year.

Net operating losses incurred by a taxpayer on account of depreciation may be carried forward by the enterprise until such loss is fully offset. However, to claim such offset, the enterprise must be an approved enterprise under the AITL.

Depreciation and expenditure that relate to a period covered by a tax exemption or to a period before an enterprise becomes an approved enterprise for the first time may not be included in the calculation of a net operating loss.

**Relief for losses.** A corporation or limited liability company that incurs a net operating loss in a tax year may deduct the loss from its taxable income of the following three years in equal proportions.

Net operating losses incurred by approved enterprises as a result of depreciation may be carried forward until they are fully offset.

## **D. Other significant taxes**

Afghanistan does not impose value-added tax or goods and services tax. Customs duties apply to the import of goods.

## **E. Miscellaneous matters**

**Foreign-exchange controls.** In general, remittances in foreign currency are regulated and are required to be converted to afghanis (AFN) at the established rate of the Da Afghanistan Bank. In

certain cases in which the Da Afghanistan Bank does not trade for a particular currency, the currency is first converted into U.S. dollars and then into afghanis.

**Antiavoidance rules.** All transactions between connected persons are expected to be carried out at an arm's length. If transactions are not conducted on an arm's length basis, the tax authorities may determine the arm's length standard under prescribed methodologies. These methods are similar to the methods as available under the commentary to the Organization for Economic Cooperation and Development (OECD) model convention.

If a person enters into any transaction or arrangement with the intent to cause reduction of liability to pay tax, the MoF may disregard such transaction or arrangement and assess all persons affected by the transaction or arrangement as if the disregarded transaction or arrangement had not taken place.

## F. Bilateral agreements

A bilateral agreement between Afghanistan and the United States exists in the form of Diplomatic Notes exchanged between the countries. Under the Diplomatic Notes, tax exemption is provided to the U.S. government and its military, contractors and personnel engaged in activities with respect to the cooperative efforts in response to terrorism, humanitarian and civic assistance, military training and exercises, and other activities that the U.S. government and its military may undertake in Afghanistan.

Military and technical agreements have also been entered into with International Security Assistance Forces (ISAF), which allow similar exemptions.

Exemptions available under these agreements are subject to private rulings obtained from the MoF. In addition, the agreements generally do not provide exemptions from the obligation to withhold tax from all payments to employees, vendors, suppliers, service providers, lessors of premises and other persons, as required under the local tax laws.

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## Albania

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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
Technical Services	10
Management Services	10
Financial Services	10
Insurance Services	10
Participation in Management and Administration Bodies	10
Construction, Installation or Assembly Projects and their Supervision	10
Payments for Entertainment, Artistic or Sporting Events	10
Gambling Gains	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

**B. Taxes on corporate income and gains**

**Corporate income tax.** Albanian companies are companies that are incorporated in Albania or have their place of effective management in Albania. Albanian companies are subject to corporate income tax on their worldwide income. Foreign companies are subject to tax on profits generated from activities performed through a permanent establishment in the country and on income from Albanian sources.

**Rates of corporate tax.** The corporate income tax rate is 10%.

**Capital gains and losses.** Capital gains derived from the disposal of assets, including shares, are subject to tax at the standard rate of 10%. Capital losses are deductible for tax purposes.

The law is not clear regarding the taxation of capital gains derived by a foreign company from the sale of domestic shares. However, the tax administration guidelines provide that such gains are subject to tax. They also provide that if the buyer is a domestic entity, it must withhold and pay the tax calculated on the net basis (sales price minus acquisition costs). If the buyer is a foreign entity, the relevant tax liability must be settled by the seller.

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

Companies must make monthly advance payments of corporate income tax by the 15th day of each month. Newly established companies involved in production activities are not required to make monthly advance payments for a period of either six months or the period until the end of the fiscal year, whichever is shorter. Taxpayers that made monthly advance payments for the preceding year or for the current year of no more than ALL 10,000 are allowed to make quarterly advance payments.

The monthly advance payments for January through April are calculated based on the taxable income of the tax year before the preceding tax year. The monthly advance payments for May through December are calculated based on the taxable income of the preceding tax year. The tax rate for the calculation of the advance payment is 10%. If the company demonstrates to the tax authorities that the taxable income in the current year will be substantially lower than the taxable income of the reference period, the tax authorities may decide to decrease the advance payments. If the tax authorities approve the taxpayer's request for the reduction of the monthly corporate advance payments and at year end the corporate tax liability exceeds the amount of advance payments by more than 10%, default interest is applied to the difference. If the tax authorities determine that the taxable income of the current year will be increased by more than 10% compared with the taxable income realized in the reference period, they may decide to increase the advance payments. Companies that generated losses in the reference years make monthly advance payments based on their taxable profit projections for the current year.

By 31 March, companies must file the annual tax return and pay the corporate tax due for the tax year less advance payments made.

Companies not complying with the filing and payment deadlines described above are subject to interest and penalties. Late tax payments are subject to interest at a rate of 120% of the interbanking interest rate, published by Bank of Albania. The interest is not deductible for corporate income tax purposes. Late tax payments and inaccurate tax return filings are charged with a penalty of 5% of the unpaid liability for each month of delay, capped at 25%. In addition, a penalty of ALL 10,000 can be assessed if the tax return is not filed by the due date. If the unreported tax liability results from tax evasion, the penalty is 100% of the unpaid liability.

**Dividends.** Dividends paid by Albanian companies to resident and nonresident individuals and to foreign entities are subject to withholding tax at a rate of 10% unless the rate is reduced under an applicable double tax treaty (see Section F). Dividends received by Albanian companies are exempt from tax.

**Foreign tax relief.** Foreign direct tax on income and gains of an Albanian resident company may be credited against the corporate tax on the same profits. The foreign tax relief cannot exceed the Albanian corporate income tax charged on the same profits. If a company receives income from a country with which Albania has entered into a double tax treaty, other forms of foreign tax relief may apply, as stipulated in the provisions of the treaty.

### **C. Determination of trading income**

**General.** The assessment is based on the financial statements prepared in accordance with the local standards or International Financial Reporting Standards (IFRS), subject to certain adjustments for tax purposes as specified in the Albanian Tax Code and other supplementary legal acts.

All necessary and reasonable expenses incurred for the business activity that are properly documented are deductible, except for the following:

- In-kind compensation.
- Voluntary pension contribution payments (excluding the statutorily required social security contributions in Albania).
- Wages and salaries that are not paid through the banking system.
- Write-off of debts if all legal means for their collection have been exhausted.
- Expenses for payments subject to withholding tax if they are not paid in the relevant tax year. Such expenses are allowed as deductible expenses if the withholding tax is remitted within the tax year in which the relevant services are rendered.

Other types of expenses may be deducted up to a ceiling. These expenses include, but are not limited to, the following:

- Representative and entertainment expenses are deductible up to 0.3% of annual turnover.
- Production waste and losses, including losses from impairment, are deductible to the extent provided by the relevant legislation.
- Sponsorships are generally deductible up to 3% of the income before tax and up to 5% for media-related sponsorships.
- Per diems are deductible up to ALL 3,000 per day for traveling inside 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 debt does not exceed four times the equity. Such limitation does not apply to banks, insurance companies and leasing companies.
- Costs of improvements and maintenance are fully deductible in the year in which they are incurred 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 ALL 300,000.

**Inventories.** The inventory valuation rules stipulated 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. Changes in the method must be reflected in the books of the company.

**Provisions.** Companies may not deduct provisions, except for certain levels of provisions and special reserves specified by regulations regarding insurance companies and financial-service companies.

**Tax depreciation.** Buildings are depreciated separately for tax purposes using the declining-balance method at a rate of 5%. Intangible assets are depreciated using the straight-line method at a rate of 15%.

Other assets are depreciated in groups, using the declining-balance method. The applicable rates are 25% for computers, information systems and software, and 20% for all other fixed assets.

**Relief for losses.** Losses may be carried forward for three consecutive years. However, if a change of 25% in the entity's ownership occurs, the remaining losses are forfeited. Loss carrybacks are not allowed.

**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; exempt supplies include leases of land, supplies of buildings, financial services and international supplies of services	
Standard rate	20%
Supplies of medicine and medical care services	10%
Exports of goods and supplies of services relating to international transportation	0%
Real estate property tax	
Buildings	ALL 5 to ALL 200 per square meter
Agricultural land	ALL 700 to ALL 5,600 per hectare
Real estate transfer tax	
Buildings	ALL 100 to ALL 2,000 per square meter
Other	2% of acquisition value
Social security contributions, on monthly salary up to ALL 87,700; paid by	
Employer	16.7%
Employee	11.2%
Excise duties on specified goods	
Cigarettes containing tobacco	ALL 70 per box
Coffee	ALL 30 per kilogram
Roasted coffee	ALL 140 per kilogram
Beer from malt	ALL 10/12 per liter
Wines and sparkling wines, champagne and cider	ALL 20 per liter
Vermouth and other wines prepared from aromatic plants or substances	ALL 20/35 per liter
Other fermented drinks and nonalcoholic drinks	ALL 20 per liter
Brandy	ALL 100 per liter
Denaturized ethylic alcohol	ALL 0
Ethylic alcohol not denatured, with over 80% alcohol	ALL 400 per liter
Alcoholic drinks	
Containing alcohol over 12% of volume	ALL 220/300 per liter
Containing alcohol less than 12% of volume	ALL 100 per liter
Normal petrol	ALL 50 per liter
Unleaded petrol	ALL 37 per liter
Diesel	ALL 50 per liter
Consumption tax for oil and gas oil	ALL 7 per liter

## E. Foreign-exchange controls

Albania has a free foreign exchange market. The Albanian currency, the lek (ALL), 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. All entities must properly document all of their money transfers to comply with the regulations of Bank of Albania. 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.

	Dividends %	Interest %	Royalties %
Austria	5/10 (a)	5 (b)	5
Belgium	5/10 (a)	5	5
Bosnia-Herzegovina	5/10 (a)	10	10
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
Estonia	5/10 (f)	5 (b)	5
France	5/10 (a)	10	5
Greece	5	5	5
Hungary	5/10 (a)	0	5
Ireland	5/10 (a)	7 (b)	7
Italy	10	5 (b)	5
Korea (South)	5/10 (a)	10 (b)	10
Kosovo	10	10	10
Latvia	5/10 (a)	5/10 (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
Singapore	5	5 (b)	5
Slovenia	5/10 (a)	7 (b)	7
Spain	0/5/10 (e)	6 (b)	10
Sweden	5/10 (a)	5	5
Switzerland	5/10 (a)	5	5
Turkey	5/10 (a)	10 (b)	10
Nontreaty countries	10	10	10

(a) The lower 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. 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 and that has invested at least US\$250,000 in the capital 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.
- (e) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 75% of the capital of the payer. 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. The 10% rate applies to other dividends.
- (f) The lower 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. The higher rate applies to other dividends.

Albania has signed tax treaties with Germany, Kuwait and Luxembourg, but these treaties have not yet entered into force.

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### A. At a glance

Corporate Income Tax Rate (%)	19/25 (a)
Capital Gains Tax Rate (%)	15/20 (b)
Branch Tax Rate (%)	19/25 (a)
Withholding Tax (%)	
Dividends	10/15 (b)
Interest	10
Royalties from Patents, Know-How, etc.	24
Foreign Services	24
Fees for Technical Assistance and other Remuneration for Services	24
Branch Remittance Tax	15 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	4

- (a) The corporate income tax rate is 25% for trade and service activities. A reduced rate of 19% applies to production of goods, construction and public works.
- (b) The higher rate applies to payments to nonresident individuals or companies.
- (c) The branch remittance tax is levied on Algerian permanent establishment net profits after deduction of corporate income tax.

## **B. Taxes on corporate income and gains**

**Corporate income tax.** The following companies are subject to corporate income tax:

- Resident companies (those incorporated in Algeria)
- Nonresident companies that have a permanent establishment in Algeria

In general, corporate income tax (Impôt sur le Bénéfice des Sociétés, or IBS) is levied on income realized in Algeria, which includes the following:

- Income derived from trading activities carried out by companies
- Income of representative agents of companies
- Income of companies that do not have an establishment or a representative agent but realize a complete cycle of commercial activities

**Tax rates.** The standard corporate income tax rate is 25% for trade and service activities. A reduced rate of 19% applies to production of goods, construction and public works.

**Tax incentives.** Ordinance No. 01-03, dated 20 August 2001, relating to the development of investment, as amended, provides for investment regimes applicable to national and foreign investments made in the production of goods and services, and investments made within the framework of the granting of a license and/or a concession.

For purposes of the above ordinance, investments include the following:

- Acquisition of assets included in the creation of new activities, capacity of production extension, rehabilitation and restructuring
- Participation in the share capital of an Algerian company
- Takeover of an activity within the framework of a partial or total privatization

Before the investments are made, they must be declared to the National Agency for Investment Development (Agence Nationale pour le Développement des Investissements, or ANDI), together with the submission of the application for the granting of the advantages.

The advantages granted by the ANDI to the investors depend on the applicable regime.

*General Regime.* The General Regime applies to national and foreign investments made in the activities of production of goods and services as well as investments made within the framework of the granting of a license and/or a concession.

During the setting-up of their investments, companies benefit from the following advantages:

- Exemption from value-added tax (VAT) on non-excluded goods and services directly involved in the investment implementation
- Exemption from customs duties on non-excluded imported equipment directly involved in the investment implementation
- Exemption from property transfer tax on all property acquisitions made within the framework of the investment concerned
- Exemption from registration duties on concessions of land attributable to the investment regime

When operating, companies may be granted the following advantages for a three-year period:

- IBS exemption
- Tax on professional activity (TAP) exemption

The duration of these advantages can be granted for 3 to 5 years for investments that create more than 100 jobs at the beginning of the activity.

*Derogatory Regime.* Under the Derogatory Regime, investments realized in areas in which development requires a contribution of the State, as well as investments relating to a particular interest for the national economy, may benefit from particular advantages.

During the setting-up phase for investments realized in development areas, companies may benefit from the following advantages:

- Exemption from VAT on non-excluded goods and services
- Exemption from customs duties on non-excluded imported goods and services
- Registration fees at a reduced rate of 2%
- Exemption from property transfer tax for all property acquisitions

When operating, companies may be granted the following advantages:

- Exemption from IBS and TAP for a period of 10 years;
- Exemption from property transfer tax on all property acquisitions for a period of 10 years
- Granting of supplementary advantages to facilitate the investment, such as favorable rules concerning loss carryforwards and timing of depreciation

During the setting-up phase, for investments involving a particular economic interest for Algeria, companies may benefit from the following advantages for a period not exceeding five years:

- Exemption from duties, taxes and other levies on all goods and services imported or locally purchased
- Exemption from registration fees
- Exemption from registration duties on the transfer of the property affected in the production

When operating, these companies may be granted the following advantages for a period not exceeding 10 years:

- Exemption from IBS
- Exemption from registration duties and land publication fees in consideration of concessions on real estate assets granted for the realization of investment projects
- TAP exemption

Under the Algerian Direct Tax Code, the portion of companies' profits that results from the exemptions from IBS and other taxes under the incentives provided by the investment regulations (in both the General Regime and the Derogatory Regime) must be reinvested in real estate property or movable property within the four tax years following their realization.

For a failure to comply with this reinvestment obligation, the amount of the tax advantage (the IBS exemption) and a penalty equaling 30% of this amount must be paid to the tax authorities.

**Capital gains.** Capital gains are included in ordinary income and taxed at the applicable corporate income tax rate.

Capital gains derived from the sale of fixed assets are taxed differently, depending on whether they are short-term capital gains (on assets held for three years or less) or long-term capital gains (on assets held for more than three years).

The following percentages of capital gains derived from the partial or total sale of assets within the framework of industrial, commercial, agriculture or professional activities are included in taxable profits:

- 70% of long-term capital gains
- 35% of short-term capital gains

Capital gains derived from the sale of shares realized by nationals are taxed at a rate of 15%.

Unless otherwise provided by a double tax treaty, nonresident companies that derive capital gains from the sale of shares of an Algerian entity are subject to a final withholding tax at a rate of 20%.

**Administration.** An annual tax return must be filed with the tax administration within four months after the end of the financial year. Foreign companies carrying out activities in Algeria through a permanent establishment are subject to the same filing obligations as companies incorporated in Algeria. These obligations include the filing of an annual corporate tax return (IBS return, named G4 form or G4 Bis form), before 30 April of each year.

The IBS is generally paid in three down payments from 20 February to 20 March, from 20 May to 20 June and from 20 October to 20 November of the year following the financial year, if profit has been realized and used for the base of tax calculation. The amount of each down payment is equal to 30% of the IBS due on profits realized during the last closed financial year.

Permanent establishments of foreign companies must make an IBS down payment equal to 0.5% of the amounts billed every month. When filing the annual IBS return, these IBS down payments are offset against the IBS due.

Certain listed documents must be attached to the IBS return, including the balance sheet and a summary of the profit-and-loss account.

Taxes withheld at source and those paid in cash must be declared on a monthly tax return (“G 50” form). These taxes include the following:

- Personal income tax (Impôt sur le Revenu Global, or IRG)
- Withholding tax due on passive income and remuneration paid to nonresident service suppliers
- TAP
- IBS down payments
- Value-added tax

This form must be filed within 20 days following the end of the month of payment of the relevant remuneration together with the payment of the related taxes.

**Dividends.** Dividends received by residents are subject to a 10% withholding tax.

Subject to double tax treaties, a 15% withholding tax is imposed on dividends paid to nonresident companies.

**Royalties.** Unless otherwise provided by double tax treaties, a 24% withholding tax is imposed on royalties and remuneration for services paid to nonresident entities.

For contracts relating to the use of computer software, a tax allowance at a rate of 80% is applicable on the amount of the royalties. Consequently, the effective rate of the withholding tax is 4.8%.

**Foreign tax relief.** The Algerian Direct Tax Code does not provide for foreign tax relief.

### C. Determination of trading income

**General.** The computation of taxable income is based on financial statements prepared according to generally accepted accounting principles, provided they are not incompatible with the provisions of the Algerian Direct Tax Code.

Taxable income is determined on the basis of profits and losses. Taxable income includes operating income and “extraordinary income,” such as capital gains, gains from the revaluation of business assets and subventions, subject to certain exclusions and business incentives.

In the determination of taxable income, any expenditure that is wholly, exclusively and necessarily incurred for the purposes of the exploitation of the business and the generation of income is deductible from gross income.

Financial expenses related to overseas loans, royalties, technical assistance fees and other fees payable in foreign currencies may be deducted for tax purposes during only the financial year of their effective payment.

Certain expenses are not deductible for tax purposes, including the following:

- Expenses, costs and rents of any type that are not directly assigned to operations (for example, premises leased for accommodation of members of the company’s management)
- Fines, interest on late payments and penalties, interest and increases in duties as a result of defaults or insufficiencies in tax returns or payments
- Gifts (except those for advertisements, the value of which does not exceed DZD 500 per beneficiary)
- Subsidies or donations except those made to humanitarian organizations or associations or those made to nonprofit research organizations up to some limit
- Restaurant, hotel and entertainment expenses not directly linked to the business

**Inventories.** Inventories are valued at cost in accordance with the new Algerian accounting and financial system.

**Provisions.** Provisions are generally deductible for income tax purposes if they satisfy the following conditions:

- They are established for losses or charges that are clearly identified and likely to occur.
- They are recorded both in the books and financial statements.
- They are listed on the statement of reserves attached to the annual tax return.

Reserves or the portion of them that are not used in accordance with their intended purposes or no longer have a purpose in the following financial year must be added back to the income in such financial year. Abusive establishment of provisions may result in the provisions being added back to taxable income and related penalties applied.

**Depreciation.** Under the Algerian Direct Tax Code, depreciation of fixed assets must be calculated in accordance with the following:

- Generally accepted limits
- Applicable practices for each type of industry, business or operations
- Rules provided in tax laws with respect to the depreciation system

The following are the three depreciation methods:

- Straight-line method
- Progressive method
- Declining-balance method

The straight-line method is the standard method, while progressive or declining-balance methods may alternatively be used on election.

Under the Algerian Direct Tax Code, the basis of computation of deductible depreciation is limited for private passenger-type vehicles to a purchase value of DZD 1 million. This cap of DZD 1 million does not apply if such vehicles constitute the main object of the company's activities.

**Relief for losses.** Tax losses may be carried forward four years. They cannot be carried back.

**Groups of companies.** Under the Algerian Direct Tax Code, related companies subject to IBS may elect to form a tax-consolidated group. The parent company must make the election for this regime for a four-year period and the election must be accepted by the affiliated companies.

The group tax consolidation regime is based on the consolidation of the balance sheets of the related companies with the parent company. If the activities of the related companies are subject to different rates of corporate income tax, consolidated profits are subject to tax at a rate of 19%.

A tax consolidation group may consist of an Algerian parent company and Algerian subsidiaries in which the parent company owns directly at least 90% of the capital if both of the following conditions are satisfied:

- The capital of the parent company is not owned partially or totally by the subsidiaries.
- 90% or more of the parent company is not owned by another company eligible to be a parent company.

## D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax; standard rate	17
Tax on professional activity	2
Apprenticeship tax	1
Training tax	1
Social security contributions; paid by	
Employer	26
Employees	9
Registration duties	
On sales of shares in stock companies and private limited companies	2.5
On sales of goodwill	5

## E. Miscellaneous matters

**Foreign-exchange controls.** The currency in Algeria is the dinar (DZD).

Foreign-exchange regulations in Algeria are based on the principle of nonconvertibility of Algerian dinars outside Algeria.

Payments or transfers made with respect to regular transactions within the meaning of Algerian regulations (including foreign-trade transactions and goods and services) are free, provided that certain conditions are fulfilled. Algerian accredited intermediary banks must operate these transactions.

Dividends, profits and net proceeds from investments or the liquidation of investments can also be freely transferred outside Algeria, subject to compliance with certain requirements.

In practice, transfers of interest on loans and loan repayments are subject to strong restrictions, because investors are encouraged not to resort to foreign borrowing to finance their operations in Algeria.

Nonresidents may open bank accounts in Algerian dinars and/or in foreign currencies at Algerian accredited intermediary banks. These bank accounts are subject to specific conditions on opening and operation.

**Transfer pricing.** Under the Algerian tax rules, for Algerian taxpayers that are owned or controlled by an enterprise located outside Algeria or that own or control an enterprise located outside Algeria, the income indirectly transferred to the foreign enterprise, either through an increase or decrease of purchase or sale price or through any other means, may be added back to the Algerian taxpayer's taxable income. In the absence of any relevant information for the reassessment of tax, the taxable income is determined by comparison with income of similar enterprises that are regularly operated.

*Transfer-pricing documentation requirements.* On request of the tax authorities, in the framework of a tax audit, enterprises or companies operating in Algeria and undertaking cross-border transactions must provide supporting documentation relating to their transfer-pricing policies. Failure to answer or providing an

insufficient answer triggers a 25% penalty per fiscal year calculated on the basis of the transfer-pricing reassessments resulting from the tax audit.

In addition, Algerian-based taxpayers that have tax issues are under the responsibility of the Department for Big-sized Enterprises (mainly companies belonging to foreign international groups, legal entities or businesses operating in the hydrocarbon industry) must file transfer-pricing documentation with their annual tax returns to the tax authorities. The lack of documentation or insufficient documentation at the time of the tax return filing results in a 25% tax penalty.

## F. Treaty withholding tax rates

	Dividends	Interest	Royalties
	%	%	%
Austria	5/15 (a)	0/10	10
Bahrain	0	0	0
Belgium	15	0/15 (e)	5/15
Bosnia-Herzegovina	10	10	12
Bulgaria	10	10	10
Canada	15	0/15 (e)	15
China	5/15 (b)	7	10
Egypt	10	5	10
France	5/15 (a)	12 (e)	5/12
Germany	5/15 (a)	10	10
Indonesia	15	15	15
Iran	5	0/5	5
Italy	15	15	5/15
Jordan	15	0/15 (e)	15
Korea (South)	5/15 (b)	10	2/10
Kuwait	0	0	15
Lebanon	15	0/10	10
Oman	5/10 (d)	0/5	10
Portugal	10/15 (b)	15	10
Romania	15	15	15
Russian Federation	5/15 (b)	0/15 (e)	15
South Africa	10/15 (b)	10	10
Spain	5/15 (a)	5	7/14
Switzerland	5/15 (c)	0/10	10
Syria	15	10	18
Turkey	12	10	10
Ukraine	5/15 (b)	0/10	10
United Arab Emirates	0	0	10
Yemen	10	10	10
Nontreaty countries	10/15	10	24

- (a) The 5% rate applies if the beneficiary 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 higher rate applies to other dividends.
- (b) The lower 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.
- (c) The lower rate applies if the beneficiary 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.
- (d) The lower rate applies if the beneficiary of the dividends is a company, other than a partnership, that holds directly at least 15% of the capital of the payer of the dividends.
- (e) The Algerian domestic rate of 10% applies if the rate under the treaty is higher.

# Angola

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*At the time of writing, the 2012 tax reform had been proposed, but not yet fully enacted. Section G of this chapter sets out the most relevant changes for 2012 based on the proposed law. Because the changes for 2012 have not yet been fully enacted, readers should obtain updated information before engaging in transactions.*

## A. At a glance

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

- Income from certain activities, such as agriculture, forestry and cattle raising, is subject to tax at a rate of 20%. Oil and gas companies are subject to Oil Income Tax rather than Industrial Tax (corporate income tax). See Section 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.
- Certain dividends are exempt from tax (see Section B).
- Certain interest, such as interest on shareholders loans, corporate bonds, bank deposits, treasury bills, treasury bonds and titles issued by the Angolan Central Bank, is subject to a 10% rate. Interest on treasury bills and treasury bonds and titles issued by the Angolan Central Bank is subject to a reduced rate of 5% if the maturity is at least three years.
- 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.
- Mining companies may carry forward losses for five years.

## 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 place of 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. The tax law provides a force of attraction principle for permanent establishments.

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*).

**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 regions are grouped into the following three zones:

- Zone A, which consists of the region of Luanda, some main municipalities of Benguela, Cabinda and Huíla, and the municipality of Lobito
- Zone B, which consists of some regions of the municipalities of Benguela, Cabinda and Huíla, and the regions of Bengo, Cuanza-Norte, Cuanza-Sul, Malange, Namibe and Uíge
- Zone C, which consists of the regions of Bié, Cuando-Cubango, Cunene, Huambo, Luanda-Norte, Luanda-Sul, Moxito and Zaire

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

- Up to a 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 a 10-year exemption or tax rate reduction (up to 50%) for Industrial Tax
- Up to a 9-year exemption or tax rate reduction for dividend withholding tax
- Exemption or tax rate reduction for 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. 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 and gas extraction is subject to Oil Income Tax at a total rate of 50% (under production-sharing agreements) or 65.75% (under other types of joint-ventures). Angolan companies benefit from a reduced Oil Income Tax rate equivalent to that of Industrial Tax. 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. Oil Production Tax and Oil Transaction Tax are not payable under production-sharing agreements.

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

Additional taxes and charges apply within the oil and gas and mining industries. Also, specific tax rules apply to the liquefied natural gas (LNG) project, including withholding tax exemptions on certain interest, dividends, royalties and services income.

**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%. Capital gains on shares or other instruments that generate investment income that is not taxable for Industrial Tax or personal income tax purposes are subject to stamp duty at a rate of 10%.

**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 in the following three years. In practice, companies have not been making the advance payments described above. Instead, they have been making payments in accordance with the prior wording of the tax law. Under the prior wording, payments were required to be made in January, February and

March of the year following the tax year. The companies could calculate the payments based on the estimated profit for the tax year or they could make total payments equal to 75% of the preceding year's tax liability.

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 dividends. The dividend withholding tax is deductible when computing taxable income for companies. Therefore, the tax credit for dividend withholding tax (if applicable) is reduced by a factor of 1-35%, with 35% being the corporate income tax rate. This reduction is designed to prevent a double tax benefit resulting from the dividend (as an expense and as a tax credit for the entire dividend withholding tax).

A participation exemption provision has been introduced in the Stamp Duty Code. Under this measure, the 10% withholding tax applies to dividends received by Angolan parent companies from Angolan subsidiaries, subject to 25% and one-year holding requirements.

**Foreign tax relief.** In general, 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 do not exceed 2% of the balance of receivables (and do not exceed 6% of that balance on an accumulated basis)
- Risks that cannot be insured and may have to be paid

- Depreciation in the value of inventory, provided it does not exceed 0.5% to 2% (depending on the nature of the activity), up to a limit of 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.

<b>Asset</b>	<b>Rate (%)</b>
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 (for example, the oil and coal, compressed gases and mining industries).

**Relief for losses.** Companies may carry forward tax losses for three years. This period is increased to five years for mining companies. No carryback is allowed.

**Groups of companies.** No tax regulations govern groups of companies (but see Section E).

#### **D. Other significant taxes**

The following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate</b>
Training levy, on oil and gas exploration and production companies and their subcontractors	
Production companies and companies engaged in refining and processing of petroleum	US\$0.15 per barrel
Companies owning a prospecting license	US\$100,000 a year
Exploration companies	US\$300,000 a year
Subcontractors under a contract with a term exceeding one year (levied on annual gross income) and entities engaged in the storage, transport, distribution and trading of petroleum (levied on revenue derived from such activities)	0.5%
Stamp duty	
On the amount of receipts	1%
On the acquisition of real estate	0.3%
On leasing and subleasing of real estate	0.4%
On company's capital	0.1%
On guarantees	0.1% to 0.3%
On financing	0.01% to 0.5%
On financial leasing of real estate	0.3%
On leasing of movable property	0.4%
On imports	1%
Consumption tax; rate varies according to type of good and service	2% to 30%
Custom duties on imports	2% to 30%
Customs emoluments	2%
Urban property tax	25%
Property transfer tax	2%

Nature of tax	Rate
Social security contributions, on salaries and additional remuneration; the contributions are not payable by expatriates working in Angola if they make contributions to the social security scheme or a similar scheme in their home countries; paid by Employer	8%
Employee	3%

## E. Miscellaneous matters

**Foreign-exchange controls.** The Angolan Central Bank (Banco Nacional de Angola, or BNA) supervises all foreign-exchange operations. Commercial banks usually act as intermediaries of companies to obtain clearance from the BNA.

Operations of a commercial nature, such as transactions, services, insurance, travel, investment income, commissions and brokerage and salaries, with a value of up to US\$300,000 may be carried out by commercial banks without the advance approval of the BNA. Operations with a value exceeding US\$300,000 must be cleared in advance by the BNA.

In general, repatriation of profits is allowed for approved foreign-investment projects. In certain cases, a time schedule for repatriation of profits may be imposed.

**Thin-capitalization rules.** No thin-capitalization rules are in effect in Angola.

**Antiavoidance legislation.** The arm's length principle applies in Angola. Consequently, 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. Tax treaty negotiations between Angola and Portugal have begun.

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.

Portugal provides a participation exemption regime for Angolan-source dividends paid to Portuguese corporate shareholders if certain conditions are met.

## G. Proposed 2012 tax reform

At the time of writing, the 2012 tax reform had been proposed, but not yet fully enacted. The most significant tax changes in the proposed 2012 tax reform affecting companies are listed below.

**Industrial Tax.** The following are the most significant proposed changes to the Industrial Tax:

- The tax rate will be reduced from 35% to 30%.
- Interest on shareholders' loans will not be deductible.
- Expenses not properly documented will be subject to a stand-alone tax of 5%.
- Confidential expenses will be subject to a stand-alone tax of 15% (increased to 30% for taxpayers exempt or not subject to tax).

- Gifts not made in accordance with the law of patronage will be subject to a stand-alone tax of 15%.
- Urban property tax and investment income tax will not be deductible. Income subject to these taxes will be excluded from the tax base for Industrial Tax purposes.
- A new depreciation and amortization regime for fixed assets will be introduced.
- A new provisions regime will be introduced.
- Specific transfer-pricing rules will be introduced, including documentation requirements for major taxpayers.
- Tax grouping for major taxpayers will be possible.
- A tax-neutrality regime for mergers will be introduced.
- New requirements concerning advance payments will be introduced. The payments will be determined by applying a rate of 6.5% to the preceding month's turnover from the sale of goods. The same rate applies for withholding tax purposes to payments for services (the current rate is generally 5.25%).

**General Tax Code.** The following are the most significant proposed changes to the General Tax Code:

- A definition of tax residency criteria for companies and individuals will be provided.
- A new and harmonized concept of permanent establishment for tax purposes will be introduced.
- Detailed rules concerning tax incentives and benefits will be provided.
- Rules will be provided regarding the responsibility of shareholders, board members and others with respect to tax liabilities.
- The tax reform will contain measures regarding penalties.

**Other.** The tax reform will introduce invoicing requirements with respect to transactions regarding goods and services.

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## Argentina

(Country code 54)

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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.

**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*) 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 (determined in accordance with the income tax law rules), 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.
  - 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, including, among others, those applicable to the following:

- Representation expenses
- Directors' fees
- Royalties for patents and trademarks paid to nonresidents

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% (see Section E).

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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
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 certain exports (oil, grains and meat)	5/10
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.

Various types of payments abroad, including dividends, principal and interest and payments for services 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 Regulatory Decree contains 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
- 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 intragroup trading.
- 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
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 only if the dividend distributions exceed 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
- 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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*Because of the rapidly changing economic situation in Armenia, changes are expected to be made to the tax law of Armenia. As a result, readers should obtain updated information before engaging in transactions.*

**A. At a glance**

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Permanent Establishment Tax Rate (%)	20
Withholding Tax (%)	
Dividends	10
Interest	10
Royalties	10
Insurance Compensation, Reinsurance Payments and Income Received from Freight	5
Income from the Lease of Property, Capital Gains on Property and Other Income, including Passive Income Received from Armenian Sources	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

**B. Taxes on corporate income and gains**

**Corporate income tax.** Resident and nonresident entities pay corporate income tax in Armenia. Resident entities are entities and investment funds established in Armenia except for pension funds and separate subdivisions (branches or representation offices) of foreign organizations. Nonresident entities are entities established in foreign countries, international organizations and organizations established by them outside Armenia. Resident entities are taxed on their worldwide income, which consists of income received from sources in and outside Armenia. Nonresident entities are taxed on Armenian-source income only.

Income earned through a permanent establishment in Armenia, net of tax-deductible expenses, is taxed at the regular corporate income tax rate of 20%. A permanent establishment is defined as a fixed place of business activities in Armenia recognized by the tax authorities through which the enterprise wholly or partly carries on its business. It generally includes organizations or natural persons who represent foreign legal entities conducting commercial activities in Armenia. Domestic tax law and double tax treaties list activities that do not result in a taxable permanent establishment. Foreign legal entities deriving income from the source in Armenia without a permanent establishment there are subject to withholding tax on their Armenian-source income at a rate of 5% or 10% (see the withholding tax rates in Section A).

Armenian law allows foreign investment in various forms, including investment through wholly or partially foreign-owned subsidiaries, share participations in joint stock companies and joint ventures with Armenian legal entities and citizens, permanent establishments and other types of participations.

**Tax rate.** The regular corporate income tax rate is 20%. For investment funds, the corporate income tax rate is 0.01% of net assets.

**Capital gains.** No separate capital gains tax is imposed in Armenia. Realized capital gains are included in taxable income and are subject to tax at the regular corporate income tax rate.

Realized capital losses can be carried forward together with other losses and be offset against taxable income of future tax years.

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

Both Armenian and foreign legal entities conducting business activities in Armenia through a permanent establishment must make advance payments of corporate income tax during the year. Armenian legal entities must make quarterly advance payments, in the amount of 18.75% of the actual amount of the corporate income tax for the preceding year, by the 15th day of the last month of the quarter. If the advance payment of corporate income tax is less than 1% of the difference between the income calculated by the accrual method for the sale of goods (except for fixed assets and securities) and the provision of services within the preceding quarter and the depreciation allowance calculated for fixed assets not exceeding 50% of the income for the relevant period, the taxpayer must make minimum corporate income tax quarterly payments equal to 1% of such difference. Permanent establishments of foreign legal entities must make half-yearly advance payments in equal parts, in the amount of 1/4 of the corporate income tax for the preceding year, by 1 July and 31 December of the tax year.

Armenian legal entities are not required to make advance payments if their profit for the preceding year was less than AMD 500,000 (approximately US\$1,351) or if they were not considered value-added (VAT) payers in the preceding year. Permanent establishments of foreign legal entities are not required to make advance payments if their profit for the preceding year was less than AMD 2 million (approximately US\$5,405).

If the total sum of advance payments exceeds the tax due for the tax year, the excess shall be refunded to the taxpayer according to the Law of Armenia "On Taxes" if the taxpayer applies for a refund. However, in practice, refunds are rare, and accordingly taxpayers apply overpayments against future tax liabilities.

The annual corporate income tax calculation must be filed and submitted to the Tax Inspectorate by 15 April of the year following the tax year. The corporate income tax must be paid to the state budget by 25 April of the year following the tax year.

Fines are charged on late tax payments at a rate of 0.15 % of the tax due for each day of delay. If the taxpayer fails to submit the corporate income tax declaration to the Tax Inspectorate for more than two months after the due date, a penalty equal to 5% of the

total amount of the tax not paid as a result of this delay is imposed on the taxpayer for each 15-day period. The total amount of the penalties cannot exceed the total amount of the principal tax liability. For the underreporting of taxable income, a penalty equal to 50% of the underreported amount is assessed to the taxpayer. For the overreporting of losses in the corporate income tax calculation filed with the Tax Inspectorate, the taxpayer is subject to a penalty equal to 20% of the overreported loss.

**Dividends.** Dividend withholding tax at a rate of 10% is imposed on dividends paid from Armenian sources to nonresident legal entities. Dividends paid to individuals and resident legal entities are not subject to withholding tax. Dividends received by resident taxpayers from participations in the equity of other legal entities or enterprises that do not have the status of a legal entity are not subject to tax.

**Interest.** Interest withholding tax at a rate of 10% is imposed on interest paid from Armenian sources to individuals and nonresident legal entities. Interest paid to Armenian legal entities is included in the taxable income of entities and is subject to tax at the normal corporate income tax rate.

**Foreign tax relief.** The amount of corporate income tax withheld from Armenian residents in foreign countries in accordance with the laws of the foreign countries is credited against the corporate income tax payable in Armenia. However, the amount of the credit may not exceed the amount of the corporate income tax payable in Armenia on the income received in the foreign country. If the amount of the credit exceeds the corporate income tax liability for the tax year, the excess amount may be credited against the corporate income tax in subsequent tax years.

### C. Determination of taxable income

**General.** Taxable income is defined as a positive difference between gross income of the taxpayer and all deductions allowed by the law.

Gross income comprises all revenues of the taxpayer received in the reporting year, except for revenues that are not treated as income according to the law. Gross income includes the following:

- Trading income
- Capital gains
- Income from financial activities
- Gratuitously received assets and income from discounts or remissions of liabilities
- Other items of income

Income received in foreign currency is converted into drams at the daily exchange rate determined by the Central Bank of Armenia for the date of receipt of the income.

Deductible expenses include all necessary and documentary supported expenses that are exclusively and directly related to the conducting of business and the receiving of income. However, certain expenses are nondeductible or partially nondeductible for tax purposes.

Nondeductible expenses include the following:

- Fines, penalties and other proprietary sanctions transferred to the state and municipal budgets
- Assets provided free of charge and remitted debts
- Allocations provided for unions and other structures of non-state administration
- Expenses for the maintenance of servicing units (free provision of buildings and the settling of fees for utilities of public catering enterprises)
- Expenses for services that are not related to the production of goods (for example, planning activities for towns and other populated areas and promotion of agricultural activities)
- Expenses related to the obtaining of income that is deductible from gross income

Partially nondeductible expenses include the following:

- Payments levied by the state for pollution of the environment that exceed 0.5% of gross income for the tax year.
- Expenses for advertisements outside Armenia that exceed 3% of the gross income for the tax year or 20% of the value of goods and services exported by the taxpayer during the tax year.
- Expenses for the training of staff outside Armenia that exceed 4% (but not more than AMD 3 million per employee) of the gross income for the tax year.
- Expenses for additional training of staff outside Armenia that exceed 1% (but not more than AMD 1 million per employee) of the gross income for the tax year.
- Expenses for marketing outside Armenia that exceed 2% of the gross income for the reporting year, 15% of the value of services and goods exported by the taxpayer during the tax year or 5% of the value of goods imported by the taxpayer during the tax year.
- Expenses for business trips outside Armenia that exceed 5% of the gross income for the tax year.
- Representative expenses exceeding 0.5 % (but not more than AMD 5 million) of the gross income for the tax year.
- Other expenses exceeding the rates established by the government of Armenia (daily expenses for local trips, expenses for sponsorship and management services, expenses for special nutrition, uniforms and other equipment for employees as well as other types of compensation defined by the law and expenses for the maintenance of public health institutions, nursing homes for the aged and disabled, nurseries, rehabilitation camps, cultural, educational and sports institutions and objects of the housing fund).
- Interest paid on loans and borrowings to the extent that it exceeds twice the bank interest rate defined by the Central Bank of Armenia (currently the deduction is limited to a rate of 24%).
- Fixed asset repair and maintenance expenses (current expenses) that exceed 10% of the initial (purchase) cost of the corresponding fixed asset. Any excess is subject to capitalization and is included in the base for depreciation purposes.
- For taxpayers other than banks and credit organizations, the amount of interest payable on borrowings from entities other than banks and credit organizations in excess of twice the net assets.
- For banks and credit organizations, the amount of interest payable on borrowings from entities other than banks and credit organizations in excess of nine times the net assets.

To calculate taxable income, the taxpayer must account for income and expenses on an accrual basis. Income and expenses are accounted for, respectively, from the moment of the acquisition of the right to receive such income or to recognize the expenses, regardless of the actual period of the deriving of such income or the making of such payments.

**Inventories.** Inventories are valued at the lower of acquisition cost or market value. Costs for storage and transportation must be included in the value of inventory. The first-in, first-out (FIFO) method may be used to value inventory.

**Provisions.** Bad debts are deductible in accordance with the procedure established by the government of Armenia. Banks, lending organizations, investment companies and insurance companies may deduct bad and doubtful debts in accordance with the procedure established jointly by the authorized body of the government of Armenia and the Central Bank of Armenia.

In addition, the gross income of banks, lending organizations, stock funds, investment companies or insurance companies may be reduced by a reserve for possible losses in accordance with the procedure established jointly by the authorized body of the government of Armenia and the Central Bank of Armenia.

**Tax depreciation.** Depreciation allowances for fixed and intangible assets used in economic activities are deductible for tax purposes in accordance with the terms and conditions provided by the corporate income tax law of Armenia. The annual amount of depreciation allowances is calculated by dividing the initial cost or revalued cost (the revaluation is carried out according to the procedure established by the law) by the number of years in the depreciation period for the appropriate group of fixed assets or for intangible assets. The following are the minimum depreciation periods.

Group	Assets	Minimum depreciation period (years)
1	Buildings and constructions of hotels, boarding houses, rest homes, sanitariums and educational institutions	10
2	Other buildings, constructions and transmission devices	20
3	Robot equipment and assembly lines	3
4	Calculating devices and computers	1
5	Other fixed assets, including growing cattle, perennial plants, and investments intended for improving the land	5

For purposes of the determination of taxable income, taxpayers may choose a depreciation period for fixed assets other than the periods mentioned in the above table, but the chosen period may not be less than one of the above-mentioned periods for the appropriate group.

The minimum depreciation period for the buildings, constructions and transmission devices located in a disaster area (currently Gyumri) is one year.

The minimum depreciation period for fixed assets with a value of less than AMD 50,000 (approximately US\$135) is one year.

Intangible assets are depreciated over their useful economic lives. If it is impossible to determine the useful life of an intangible asset, the minimum depreciation period for the asset is set at 10 years, but it may not exceed the period of the taxpayer's activity.

Under the law, land cannot be depreciated.

**Relief for losses.** Enterprises may carry forward a loss incurred in a tax year to the following five years. Losses may not be carried back.

**Groups of companies.** Armenian law does not contain any measures allowing members of a group to offset profits and losses.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT); imposed on the delivery of goods and rendering of services, free or partially free consumption and the importation of goods through the "Importing for Free Turnover" customs regime, with the exception of cases specified by law; reverse-charge VAT is imposed on entrepreneurial activities subject to VAT that are performed in Armenia by foreign entities (including the import of goods to be used by such entities)	0/20
Excise tax; imposed on certain goods (tobacco products, alcoholic beverages, and petrol and diesel fuel imported or produced in Armenia); the tax is calculated as a specified amount per unit or as a certain percentage of the price of goods subject to excise tax	Various
Property tax; generally imposed at local (municipal) level	
Buildings and constructions; tax base is cadastral value	0.1 to 1
Vehicles; tax base is traction-motor power	Various

Land tax is also generally imposed at the local level in Armenia. Hotel tax, which will be imposed at the local level, will become effective after parliament enacts the relevant law.

#### E. Foreign-exchange controls

The Armenian currency is the dram (AMD). The dram is a nonconvertible currency outside Armenia. Enterprises may buy or sell foreign currencies through specialized entities in Armenia (banks, branches of foreign banks operating in Armenia, credit organizations, payment and settlement organizations, foreign-currency dealers and brokers licensed by the Central Bank of Armenia, foreign-currency exchange offices and foreign-currency auction organizers).

Armenia 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 Armenia between resident legal entities or individuals must be performed in Armenian drams. Transactions between resident legal entities or private entrepreneurs and nonresident legal entities or private entrepreneurs may be conducted in other currencies.

## F. Treaty withholding tax rates

Armenia has entered into tax treaties with 35 countries. The following table lists the withholding tax rates under these treaties. In general, if the withholding tax rate provided in a treaty exceeds the rate provided by the Law of Armenia on "Corporate income tax," the domestic rate applies.

	Dividends %	Interest (1) %	Royalties %
Austria	5/15 (a)	0/10 (v)	5
Belarus	10/15 (b)	10	10
Belgium	5/15 (a)	0/10 (v)	8
Bulgaria	5/10 (c)	10	10
Canada	5/15 (d)	10	10
Czech Republic	10	5/10 (e)	5/10 (f)
China	5/10 (g)	10	10
Croatia	0/10 (h)	10	5
Cyprus	0/5 (x)	5	5
Estonia	5/15 (i)	10	10
Finland	5/15 (i)	5	5/10 (j)
France	5/15 (k)	0/10 (v)	5/10 (l)
Georgia	5/10 (g)	10	5
Greece	10	10	5
Hungary	5/10 (g)	10	5
India	10	10	10
Iran	10/15 (m)	10	5
Italy	5/10 (n)	0/10 (w)	7
Kazakhstan	10	10	10
Latvia	5/15 (i)	10	10
Lebanon	5/10 (g)	8	5
Lithuania	5/15 (i)	10	10
Luxembourg	5/15 (a)	10	5
Moldova	5/15 (o)	10	10
Netherlands	5/10 (p)	0/5 (v)	5
Poland	10	5	10
Qatar	5/10 (q)	5	5
Romania	5/10 (r)	10	10
Russian Federation	5/10 (s)	0	0
Switzerland	5/15 (t)	0/10 (v)	5
Syria	10	10	12
Thailand	10	10	10
Turkmenistan	5/15 (u)	10	10
Ukraine	5/15 (u)	10	0
United Arab Emirates	3	0	5
Nontreaty countries	10	10	10

- (1) In several treaties, a 0% rate applies to interest paid to governmental entities, political or administrative-territorial subdivisions, local authorities, central banks or financial institutions owned or controlled by the government. This provision is not reflected in the rates shown in the table.

- (a) The 5% rate applies if the actual owner of the dividends is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends. The 15% rate applies in all other cases.
- (b) The 10% rate applies if the actual owner of the dividends is a company (other than a partnership) that directly holds at least 30% of the capital of the company paying the dividends. The 15% rate applies in all other cases.
- (c) The 5% rate applies if the actual owner of the dividends is a company that has invested in the payer more than US\$40,000 (or the equivalent amount in Armenian currency). The 10% rate applies in all other cases.
- (d) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the company paying the dividends and if the capital invested by the beneficial owner exceeds US\$100,000 (or the equivalent amount in Armenian currency) on the date of declaration of the dividends. The 15% rate applies in all other cases.
- (e) The 5% rate applies to interest on loans or credits granted by banks.
- (f) The 5% rate applies to royalties for the use of, or the right of use, literary, artistic or scientific works, including television or radio content (films and compact discs). The 10% rate applies in all other cases.
- (g) The 5% rate applies if the actual owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital (assets) of the company paying the dividends. The 10% rate applies in all other cases.
- (h) The 0% rate applies if the actual owner of the dividends is a company that directly or indirectly holds at least 25% of the capital of the company paying the dividends for a minimum period of two years before the payment of the dividends and if the dividends are not subject to tax in Croatia. The 10% rate applies in all other cases.
- (i) The 5% rate applies if the actual owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the assets of the company paying the dividends. The 15% rate applies in all other cases.
- (j) The 5% rate applies to the royalties for the use of, or the right of use, computer software, patents, trademarks, designs or models, plans or secret formulas or processes, or for information concerning industrial, commercial or scientific experience (know-how). The 10% rate applies in all other cases.
- (k) The 5% rate applies if the actual owner of the dividends is a company that directly or indirectly holds at least 10% of the assets of the company paying the dividends. The 15% rate applies in all other cases.
- (l) The 5% rate applies to the royalties for the use of, or the right to use, copyrights. The 10% rate applies in all other cases.
- (m) The 10% rate applies if the actual owner of the dividends is a company (other than a partnership) that owns at least 25% of the assets of the company paying the dividends. The 15% rate applies in all other cases.
- (n) The 5% rate applies if the actual owner of the dividends is a company that directly holds at least 10% of the capital of the company paying the dividends for a minimum period of 12 months before the date of declaration of the dividends and if the capital invested by the beneficial owner exceeds US\$100,000 or the equivalent amount in Armenian currency. The 10% rate applies in all other cases.
- (o) The 5% rate applies if the actual owner of the dividends is a company (other than a partnership) that holds at least 25% of the capital of the company paying the dividends. The 15% rate applies in all other cases.
- (p) The 5% rate applies if the actual owner of the dividends is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends. The 15% rate applies to dividends in all other cases.
- (q) The 5% rate applies if the capital invested by the actual owner of the dividends exceeds US\$100,000. The 10% rate applies in all other cases.
- (r) The 5% rate applies if the actual owner of the dividends is a company that directly holds at least 25% of the assets of the company paying the dividends. The 10% rate applies in all other cases.
- (s) The 5% rate applies if the actual owner of the dividends is a company that has invested at least US\$40,000 or the equivalent amount in Armenian currency in the share capital of the company paying the dividends. The 10% rate applies in all other cases.
- (t) The 5% rate applies if the actual owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends and if the capital invested by the beneficial owner exceeds CHF 200,000 (or the equivalent amount in Armenian currency) on the date of receipt of the dividends. The 15% rate applies in all other cases.
- (u) The 5% rate applies if the actual owner of the dividends is a company that owns at least 25% of the capital of the company paying the dividends. The 15% rate applies in all other cases.

- (v) The 0% rate applies to interest connected to sales on credit of industrial, commercial or scientific equipment or business assets, and to interest on loans granted by banking enterprises.
- (w) The 0% rate applies to the interest on loans granted by banking enterprises.
- (x) The 0% rate applies if the capital invested by the actual owner of the dividends exceeds €150,000. The 5% rate applies in all other cases.

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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 and to dividends paid on qualifying shareholdings under applicable tax treaties. The 10% rate applies in all other circumstances.
- (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 a corporation that is established in Aruba or incorporated under Aruban law. 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.

*Permanent establishment.* A permanent establishment is deemed to exist in Aruba in the case of the following:

- A permanent representative in Aruba.
- A foreign enterprise that builds, installs, maintains, cleans or repairs capital assets on Aruba for more than 30 days. These 30 days include, among others, days spent on the technical preparation and cleaning up of the site.

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

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 1.12% on their annual gross turnover. The free zone is a defined territory in which no import duties are levied if the goods are not imported for use in the domestic market. In addition, free-zone companies are not subject to turnover tax and are exempt from the foreign-exchange commission.

**Special tax regimes for certain companies.** Special tax regimes for certain companies that are available in Aruba are described below.

*Imputation Payment Companies.* Imputation Payment Companies (IPCs) are subject to the regular profit tax rate of 28%. However, on the distribution of profits, the Aruban government makes an imputation payment to the shareholders of the IPC. The effective profit tax rate for an IPC can be as low as 2%. An IPC may engage in the following qualifying activities only:

- Hotel operations
- Aviation operations
- Shipping operations
- Sustainable energy business
- 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
- Making portfolio investments (other than in real estate)
- Holding of shares and equities

An Aruba Exempt Company (Aruba vrijgestelde vennootschap, or AVV) is subject to profit tax and to withholding tax on dividends paid unless it performs 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
- Licensing of intellectual and industrial rights, similar rights and usage rights

**Fiscal transparency.** Aruban limited liability companies can opt for fiscal transparency for Aruban profit tax and dividend withholding tax purposes within one month after incorporation. If fiscal transparency is granted, the limited liability company is treated for tax purposes as a partnership; that is, only the partners can be taxed in Aruba if an Aruban source of income exists. 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*).

**Administration.** The profit tax return for the preceding accounting period must be filed within 60 days after issuance of the tax return forms. The tax return forms are normally issued 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 by resident companies that qualify for the benefits of 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 derived from qualifying participations. A qualifying participation must satisfy the following conditions:

- The shares must not be held as inventory or as a portfolio investment.
- The participation must be subject to a tax on profits.

**Foreign tax relief.** Foreign tax relief is available through the Tax Regulation for the Kingdom of the Netherlands. Foreign tax relief is also available under the state decree for the avoidance of double taxation.

### C. Determination of trading income

**General.** Commercial profits must be calculated in accordance with “sound business practice” and generally accepted accounting standards.

**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.

**Investment allowance.** Effective from 1 January 2011, the investment allowance will be temporarily reintroduced for 2011 and 2012. The investment allowance will be 6% and will apply to local investments only.

### D. Miscellaneous matters

**Foreign-exchange controls.** The Central Bank of Aruba 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 of Aruba.

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

**Controlled foreign companies.** Aruba does not have specific controlled foreign company legislation. However, numerous measures limit intercompany transactions that are not at arm's length and intercompany transactions with low-taxed entities.

**Transfer pricing.** If a company or individual participates, directly or indirectly, in the management, supervision or the capital of two or more corporate entities, the conditions that apply to the supply of goods and the rendering of services between these entities must be at arm's length. These conditions are similar to the conditions that would have applied in transactions with unrelated parties. Information to substantiate arm's length transactions must include, among other items, the following:

- The agreement between the entities
- Transfer-pricing method that was chosen and why it was chosen
- How the consideration was determined

## **E. Tax treaties**

Provisions for double tax relief are contained in the Tax Regulation for the Kingdom of the Netherlands, which contains provisions to avoid double taxation between the countries of the Dutch Kingdom (Aruba, Curaçao, the Netherlands and Sint Maarten) 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%
- 5% if the recipient of the dividends is also subject to profit tax at a rate of at least 5.5%

Effective from 10 October 2010, the Netherlands Antilles (which consisted of five island territories in the Caribbean Sea) was dissolved as a country. As a result, the island territories of Curaçao and St. Maarten became autonomous countries within the Dutch Kingdom. The island territories of Bonaire, St. Eustatius and Saba (BES-Islands) have become a part of the Netherlands as extraordinary overseas municipalities.

The Tax Regulation for the Kingdom of the Netherlands remains in place until bilateral tax treaties have been concluded between the countries in the Dutch Kingdom.

Aruba has entered into tax information exchange agreements (TIEAs) with Antigua and Barbuda, Australia, Bermuda, the British Virgin Islands, Cayman Islands, Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Spain, Sweden, the United Kingdom and the United States.

Aruba is recognized by the Organization for Economic Cooperation and Development (OECD) as a jurisdiction that has substantially implemented the internationally agreed tax standard and, as such, is white listed.

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*Australia is reforming its tax system through various tax reviews and government reform initiatives. As a result, various tax settings are changing over time. Because of these developments, readers should obtain updated information before engaging in transactions.*

**A. At a glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (b)
Branch Tax Rate (%)	30 (c)
Withholding Tax (%)	
Dividends (d)	
Franked	0
Unfranked	30 (e)
Interest	10 (f)
Royalties from Patents, Know-how, etc.	30 (g)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Indefinite (h)

- (a) It is proposed that the tax rate for corporations classified as small businesses be reduced to 29%, effective from the 2012–13 tax year, and that the corporate income tax rate be reduced to 29%, effective from the 2013–14 tax year.
- (b) For corporations, capital gains are taxed at the corporate income tax rate, with no reduced tax rates.
- (c) It is proposed that the branch tax rate be reduced to 29%, effective from the 2013–14 tax year.
- (d) Franking of dividends is explained in Section B.
- (e) This is a final tax that is imposed on payments to nonresidents only. A reduced rate (in recent treaties, reduced rates typically are 0%, 5% or 15%, depending on the level of ownership) applies to residents in treaty countries. An exemption from dividend withholding tax applies to the part of the unfranked dividends that is declared in the distribution statement to be conduit foreign income.
- (f) 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). Modern Australian tax treaties exempt government and unrelated financial institutions from withholding tax. Unilateral exemptions from interest withholding tax are provided for certain publicly offered debentures and for state and federal government bonds.
- (g) 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.
- (h) Tax losses incurred in the 1989–90 and subsequent tax years may be carried forward indefinitely.

**B. Taxes on corporate income and gains**

**Ongoing tax reforms.** A report to the Treasurer on “Australia’s future tax system” (the Henry Review), publicly released in May 2010, contained a blueprint for a “root and branch” overhaul of Australia’s tax and transfer system over an extended period.

The initial government response in May 2010 adopted a few of the recommendations (notably expansion of Australia’s taxation of

resources), rejected some and remained silent on the rest. The plan to reduce the corporate income tax rate to 29%, effective from the 2013–14 tax year, was well short of the recommended reduction to a 25% rate.

Following the 2010 federal election, the government sought the support of three independent members of parliament to govern as a minority government and agreed with them to hold a tax forum. This forum, which was held in October 2011, resulted in the establishment of a business tax working group. The working group was tasked to report on options to improve the tax loss and related rules by early 2012 and, by the end of 2012, on options to reduce corporate tax rates including consideration of an allowance for corporate equity (ACE). However, the terms of reference require that any recommended business tax reductions must be offset by budget savings (tax increases) from business taxation or business programs to keep the reform revenue neutral. This has created tension in the business community about the potential outcomes.

Business concern is magnified by the focus of the Australian government on delivering a Federal Budget surplus in the 2012–2013 year after several deficit years, and despite the volatile economic climate. Recent announcements by the government related to transfer pricing and the general antiavoidance rules (discussed in Section E) demonstrate the business concerns.

**Corporate income tax.** An Australian resident corporation is subject to income tax on its nonexempt worldwide income. 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 2011–12 tax year, resident corporations are subject to tax at a rate of 30%. Income of nonresident corporations from Australian sources is similarly taxable at 30% if it is not subject to withholding tax or treaty protection. 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.

**Resource taxation.** Legislation to reform the taxation of resources in Australia has been enacted and will apply from 1 July 2012. Significant aspects of the reforms are described below.

The existing Petroleum Resource Rent Tax (PRRT) will be expanded, effective from 1 July 2012. Previously, the PRRT which is imposed at a rate of 40%, applied only to offshore projects (that is, companies undertaking petroleum activities in Commonwealth waters and excluded projects located in the North West Shelf and certain areas within the Australian/East Timor Joint Petroleum Development Area [JPDA]).

The PRRT applies to project profits from the extraction of non-renewable petroleum resources. The expanded PRRT will apply to

onshore petroleum projects and the North West Shelf, but projects in the JPDA will continue to be excluded. Transitional measures apply to existing projects.

A Mining Resources Rent Tax (MRRT) applicable to iron ore and coal production will apply from 1 July 2012. The MRRT will apply at a rate of 30% after providing a 25% extraction allowance (resulting in an effective tax rate of 22.5%) on mining profits after allowance for certain capital expenditure. MRRT will be deductible for corporate tax purposes and a credit will be allowed for state royalties. Transitional rules apply for existing projects.

An immediate tax deduction will be provided for the exploration of geothermal energy sources, effective from 1 July 2012.

**Carbon pricing mechanism.** The federal government has introduced a climate change framework plan, involving the use of permits for relevant emissions. The two-stage plan for a carbon-price mechanism beginning on 1 July 2012 will have a fixed-price period for three years before transitioning to an emissions trading scheme, effective from 1 July 2015.

### **Capital gains**

*Income and capital gains.* Australia's tax law distinguishes income (revenue) gains and losses from capital gains and losses, using principles from case law (no statutory definitions exist). Broadly, capital gains and losses are not assessable or deductible under the ordinary income tax rules. However, the capital gains tax (CGT) provisions in the tax law may apply.

*Capital gains tax.* The CGT provisions apply to gains and losses from designated CGT events. The list of designated CGT events includes disposals of assets, grants of options and leases, and events arising from the tax-consolidation and foreign-currency rules (see Section C).

Capital gains are calculated 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. CGT gains are reduced by amounts that are otherwise assessable.

Gains or losses may be disregarded for CGT purposes if, broadly, the asset was acquired before 20 September 1985 (pre-CGT assets). 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 continuity of pre-CGT, majority beneficial ownership in the assets of the company.

*CGT deferrals or rollovers.* CGT rollover relief may be elected for various transfers, restructures and takeovers, including scrip takeovers, with taxation deferred until the occurrence of a subsequent disposal, if further rollover relief is not available. CGT rollover relief is generally not available for asset transfers within wholly owned groups (rollover may be available for transfers from nonresident group companies). However, transfers within a tax consolidated group are ignored for tax purposes (see Section C).

Capital losses are deductible only from taxable capital gains; they are not deductible from ordinary income. However, ordinary or trading losses are deductible from net taxable capital gains.

*Foreign residents and CGT.* Foreign residents are subject to CGT if an asset is “taxable Australian property,” which includes broadly the following:

- Taxable Australian real property: real property located in Australia including a leasehold interest in land, or mining and quarrying or prospecting rights, if the minerals, petroleum or quarry materials are located in Australia
- Indirect Australian real property interest: broadly, a nonportfolio interest in an Australian or foreign entity if more than 50% of the market value of the entity’s assets relates to assets that are taxable Australian real property
- The business assets of an Australian permanent establishment

*CGT participation exemption for disposals of shares in foreign companies.* 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. This participation exemption can also reduce the attributable income arising from the disposal of shares owned by a controlled foreign company in another foreign company (see Section E).

**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 accounting period.

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 15 January. Companies granted permission to adopt a substituted accounting period must file their returns by the 15th day of the 7th month after the end of their income year.

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 rules.

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 by a private company 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, a resident company receiving franked distributions grosses 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 (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.

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.

*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.* Refunds of imputation credits are not available for nonresidents.

However, the following rules also apply:

- To the extent that franked dividends are paid to nonresidents, they are free from dividend withholding tax.
- 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.

**Foreign tax relief.** Australian residents are subject to Australian tax on their worldwide income, but they may receive a foreign income tax offset for foreign taxes paid on foreign-source income included in assessable income. Prior foreign tax credit rules applied for income years ending on or before 30 June 2008 and

transitional rules bring prior foreign tax into the system. Foreign income tax offsets must be used in the year in which the related foreign-source income is included in assessable income. Otherwise, they are lost without having provided any relief from double taxation. For controlled foreign companies (CFCs; see Section E), a modified system applies. The rules allow for the grouping or mixing of highly taxed and lowly taxed foreign-source income.

### C. Determination of trading income

**General.** Taxable income is defined as assessable income less deductions. Assessable income includes ordinary income and statutory income (specifically listed in the tax law as being assessable income). Noncash business benefits may be included as income in certain circumstances.

Australia's tax law distinguishes income (revenue) gains and losses from capital gains and losses, using principles from case law. Broadly, capital gains and losses are not assessable or deductible under the ordinary income tax rules; however, the capital gains provisions in the tax law may apply (see Section B).

Tax-exempt income includes the following items:

- 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 (see Section E)
- Nonportfolio dividends (received on shares held in foreign companies by corporate shareholders holding at least 10% of the voting power in the payer), regardless of the country of residence of the payer (special rules allow debt deductions incurred in deriving such income)

The nonportfolio dividend exemption is proposed to be aligned with the debt-and-equity classification rules under the Australian tax law. This would allow a broader range of returns on equity interests to qualify for nonassessable treatment, but the exemption would not be available for interests classified as debt under the debt-equity rules discussed below, such as mandatorily redeemable preference shares. These rules are likely to be effective from the commencement of the proposed new CFC regime (see Section E.).

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.

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 commercial debt forgiveness rules, 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.

**Research and development.** Effective from 1 July 2011, a tax credit system applies for research and development (R&D), replacing the previous concession. The incentives apply to companies incorporated in Australia for R&D conducted in Australia. The location of ownership of the resulting intellectual property is not a barrier to a tax concession.

For R&D activities conducted in income years beginning on or after 1 July 2011, core and supporting activities must be registered under the new tax credit system. Supporting R&D activities must be directly related to core R&D activities. Activities that result in the production of goods or services are eligible only if they are undertaken for the dominant (or sole) purpose of supporting the core R&D activity (the “dominant purpose” test).

Eligible expenditure is not deductible but gives rise to nonrefundable tax credits of 40% for large companies, while companies with group turnover of less than A\$20 million receive refundable tax credits of 45%. For local companies conducting “foreign-owned” R&D, the 40% nonrefundable tax credit applies regardless of the amount of aggregate turnover. A minimum expenditure threshold of A\$20,000 applies.

**Debt and equity classification.** Specific debt and equity rules distinguish debt from equity. The debt and equity rules focus on economic substance rather than on legal form. If the debt test is satisfied, a financing arrangement is generally treated as debt, regardless of whether the arrangement could also satisfy the test for equity. The test is complex and extends well beyond an examination of whether a borrower has a noncontingent obligation to repay an amount of principal.

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

**Financial arrangements.** Extensive rules deal with the taxation of “financial arrangements” (as defined). The default methods are accruals and realization methods. These are supplemented by various methods available at a taxpayer’s election, using accounting approaches with respect to certain financial arrangements. The elective accounting methods include hedge treatment, fair-value reporting, retranslation for foreign-currency arrangements and, in certain cases, use of the values in financial reports for the financial arrangements.

Individuals are not mandatorily covered by these rules. Superannuation entities must apply the rules if the value of their assets exceeds A\$100 million. Approved deposit-taking institutions or securitization vehicles must apply the rules if their aggregate turnover exceeds A\$20 million. All other entities must apply the rules if either their aggregate turnover exceeds A\$100 million or if the value of their assets exceeds A\$300 million. Taxpayers that are not covered by the rules can nevertheless elect to apply the rules.

The rules apply to financial arrangements first held in income years beginning on or after 1 July 2010 (that is, new financial arrangements), but taxpayers could elect an early start date for financial arrangements first held in income years beginning on or

after 1 July 2009. Under a further election, taxpayers could also apply the rules to all of their existing financial arrangements.

**Foreign-exchange gains and losses.** Specific rules govern the tax treatment of foreign-currency gains and losses. Broadly, the measures have the following significant features:

- 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.
- They contain specific translation rules for payments, receipts, rights and obligations denominated or expressed in a foreign currency.
- They contain 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 for future expenditure.** Provisions for amounts not incurred during the year, such as leave entitlements of employees, 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 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 designs or 20 years for standard patents).

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:

$$\frac{\text{Base value}}{\text{Effective life}} \times \frac{\text{Days held}}{365} \times 200\%$$

Prime cost method:

$$\frac{\text{Base value}}{\text{Effective life}} \times \frac{\text{Days held}}{365}$$

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 of A\$57,466 (A\$75,375 for fuel-efficient cars) for the 2011–12 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.

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. The pool balance is depreciable at a rate of 37.5% (18.75% for additions during the year), applying the declining-balance method. If the choice is not exercised, the relevant assets are depreciated on the basis of their respective effective lives.

Taxpayers may also choose to allocate expenditure on the development of software to a software development pool. The expenditure is deductible over a prescribed depreciation period of two and a 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

Type of structure	Date construction began	Annual deduction %
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

At the time of writing, the “green building scheme” is being developed. It will allow a 50% bonus tax deduction for expenditure incurred on eligible assets and capital works after 1 July 2012 over eight years if the expenditure is designed to improve the energy efficiency rating of existing commercial hotels, offices and shopping centers from two stars to four stars as measured prima facie under the National Australian Built Environment Rating System.

*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.

*Five-year deduction for certain expenses.* 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 expenditure to establish or alter a business structure, expenditure to raise equity and expenditure in an unsuccessful takeover attempt or takeover defense.

**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 making 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*), losses are generally not transferable to other group members.

**Groups of companies.** Tax consolidation 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 no grouping concessions (such as the ability to transfer losses to other group members) are provided. 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 entry consolidated (MEC) group. The types of entities that may be members of an MEC group are generally the same as those for a consolidated group. However, only companies are eligible to be a Tier-1 company (Australian resident company directly owned by a foreign member of the group).

Significant amendments to the consolidation rules were enacted in June 2010. Many of these amendments apply back to the 2002 commencement of tax consolidation. The government announced changes in 2011 to limit the potential revenue impact of the 2010 amendments relating to the rights to future income rules and the residual tax cost setting rules. Proposed changes will apply from 31 March 2011, some modifications will apply from 2002, and other changes will apply to the period between 12 May 2010 and 30 March 2011, with allowance for some “protected claims.” These proposals are complex.

#### 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

**General antiavoidance regime.** The general income tax antiavoidance regime (Part IVA) plays an important role in complementing specific antiavoidance rules. However, it also creates significant uncertainty for taxpayers. The Australian courts have dealt with several cases in which taxpayers entered into complex commercial transactions that resulted in tax benefits. They applied Part IVA in some cases but not in others.

Part IVA applies if, taking into account eight specified matters, it is determined that the dominant purpose of the parties entering into a scheme was to enable the taxpayer to obtain a tax benefit. If the Commissioner of Taxation makes a Part IVA determination, the tax benefit is denied and significant penalties may be imposed.

On 1 March 2012, the government announced that Part IVA will be amended with immediate effect. Only general guidance on policy intent is available. These amendments will prima facie cover any scheme or steps after 2 March 2012. This creates significant uncertainty and risk. The need for some transitional protection is evident, and it is hoped that government will act accordingly.

**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)
- 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.

After recent court decisions questioning the Australian Tax Office's approach to transfer-pricing administration and the interaction of Australia's domestic transfer-pricing laws and double tax treaties, the government announced proposals to adjust Australia's transfer-pricing legislation. The following are significant aspects of the proposals:

- They will clarify that Organization for Economic Cooperation and Development (OECD) transfer-pricing principles apply for certain double tax treaty purposes, effective from 2004 (draft law has been issued).
- They will apply similar OECD principles to transactions not involving tax-treaty counterparties, from a future date.

On 16 March 2012, the government released an exposure draft of new transfer-pricing legislation, which is intended to clarify and confirm the Australian Tax Office's longstanding and highly controversial view that Australia's tax treaties provide a separate and unconstrained taxing power. The amendments will apply to income years beginning on or after 1 July 2004 and will significantly affect the transfer-pricing landscape in Australia for businesses that have based their tax positions and processes on the existing law.

The Australian Taxation Office encourages taxpayers to enter into Advance Pricing Arrangements.

A new International Dealings Schedule (IDS) 2012 replaces the current Schedule 25A and Thin Capitalisation Schedules. The Australian Tax Office will not accept the previous schedules if tax returns are filed after 30 June 2012. The new IDS requires more detailed and additional disclosure and introduces new questions designed to flag potential risk areas.

With respect to cross-border business restructures of Australian activities and the transfer-pricing impacts, an Australian Taxation

Office ruling in 2011 set out the Australian Tax Office's views about the need for the following:

- A commercial rationale needed for the restructuring from an Australian benefit perspective
- Appropriate pricing of functions or assets moving overseas
- Its power to recharacterize a restructure to reflect arm's length behavior

The implications of this ruling if previously considered should be revisited in the light of the proposed changes to the Australian transfer-pricing law.

**Debt-to-equity (thin-capitalization) 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). In addition, the transfer-pricing measures may affect the deductions available for related-party debt.

*Thin-capitalization.* The thin-capitalization measures apply to the following entities:

- Foreign-controlled Australian entities and foreign entities that either invest directly into Australia or operate a business through an Australian branch (inward investing entities)
- Australian entities that control foreign entities or operate a business through an overseas branch (outward investing entities)

Exceptions to the thin-capitalization rules apply if either of the following circumstances exists:

- The total debt deductions of the taxpayer are A\$250,000 or less for the year of income.
- Australian assets account for 90% or more of total assets of outward investing entities (that are not also inward investing entities).

Debt deductions are partially denied if the company's adjusted average debt exceeds the maximum allowable debt. The ratio of the denial is determined by dividing the excess debt amount by the average debt amount.

In most cases, the maximum allowable debt is calculated by reference to the safe harbor debt amount which approximates a debt-to-equity ratio of 3:1. Separate methodologies apply to financial institutions or consolidated groups with at least one member classified as a financial entity.

Taxpayers can also determine the maximum allowable debt by reference to an arm's length debt amount that is based on what amount an independent party would have borrowed from an independent lender. This determination requires the consideration of several factors. In addition, outward investors that are not also inward investors can determine the maximum allowable debt by reference to the worldwide gearing debt amount.

The tax environment in Australia is changing at a rapid pace and changes to the thin-capitalization rules are likely to be introduced, including the tightening of the safe harbor ratio to 1.5:1.

*Transfer pricing.* The Australian Taxation Office also applies the transfer-pricing provisions to the pricing of related-party debt, even if an arrangement complies with the thin-capitalization rules. A public ruling concerning the pricing of cross-border related-party

debt requires that such transactions be reviewed with regard to the commercial context of the taxpayer. The Commissioner of Taxation can substitute a hypothetical arm's length capital structure to set an arm's length interest rate if the amount of debt is considered not to be arm's length, even if the taxpayer is within the thin-capitalization safe harbor debt levels. The arm's length interest rate is then applied to the actual amount of debt allowed under the thin-capitalization measures.

The implications of this ruling if previously considered should be revisited in the light of the proposed changes to the Australian transfer-pricing law.

**Controlled foreign companies.** Since the release of exposure draft legislation in February 2011, the government has not yet announced or released further draft legislation or other material relating to the revised controlled foreign company (CFC) rules or nonportfolio dividend exemption (see Section C). It appears unlikely that the reforms will be effective from 1 July 2012. The discussion below covers the current as well as the proposed new CFC rules. Changes to the nonportfolio dividend exemption, which is part of the same reform package, are discussed in *General* in Section C.

*Current 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." Currently, the "listed countries," which have tax systems that are considered to be closely comparable to the Australian system, are the following:

- Canada
- France
- Germany
- Japan
- New Zealand
- United Kingdom
- United States

All other countries are included in the "unlisted country" category.

Certain amounts are unconditionally attributed regardless of whether the CFC is resident in a listed or unlisted country. If a CFC resident in a listed country fails the active-income test, its attributable income includes "adjusted tainted income," which is eligible designated concession income prescribed by the regulations on a country-by-country basis. This income includes items such as income subject to tonnage taxation or concessionally taxed capital gains. If a CFC resident in an unlisted country fails the active-income test, its attributable income includes all of its adjusted tainted income such as passive income (including tainted

interest, rental or royalty income) and tainted sales or services income. Losses are no longer quarantined on a class-of-income basis for purposes of calculating the notional income of a CFC.

Nonportfolio dividends paid by a foreign company are not included in the assessable income of an Australian company. As a result, income derived by a CFC is exempt from Australian income tax if remitted as dividends to an Australian company. The Australian taxpayer may claim debt deductions incurred in earning the exempt nonportfolio dividend income.

Under the control test, 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.

*New CFC rules.* The CFC reforms will generally be beneficial and should allow for more efficient foreign operating structures. Further exposure draft legislation is expected to be released before the introduction of the final legislation, which is likely to occur during the first half of 2012. The revised rules define a CFC by reference to the accounting concept of control. The rules apply only to passive income and gains such as returns on debt and equity interests, rent, tainted royalties and annuities. Passive income no longer includes sales and service income but covers profits on financial arrangements and profits from CGT events.

A *de minimis* exemption will exclude a CFC from attribution if its “passive financial account income” is less than 5% of the CFC’s “financial account income” determined by using the CFC’s accounts prepared in accordance with commercially accepted accounting principles.

Passive income will not be attributable if it is earned in an “active” context (that is, it is attributable to a permanent establishment of the CFC and arises from the CFC competing in a market based substantially on the “ongoing use of labor.” The draft active income rule currently requires that the source of income, the market and the labor must have a substantial connection with the country in which the permanent establishment is located.

In addition, subject to an integrity rule, income received between CFCs that are members of the same CFC group will not be subject to attribution. Rent from real property will not be attributable. However, royalty income “connected with Australia” will be attributable, regardless of its active character or its receipt within a CFC group.

Existing specific rules excluding attribution for CFCs in listed countries mentioned above will be retained. Certain income from banking or money lending derived by a CFC that is a subsidiary of an Australian financial institution (AFI) will be excluded from attribution.

A specific integrity rule will override the active income or the AFI exemptions, if the relevant income relates to a tax benefit received by the CFC’s attributable taxpayer or an associate of the attributable taxpayer.

*Foreign Accumulation Fund rule.* Foreign investment fund (FIF) rules dealing with attribution of income related to certain non-controlling interests are repealed, effective from the 2010–11 and future income years. The Foreign Accumulation Fund (FAF) rule will replace the FIF rules. The FAF rule is intended to create a narrowly defined antiavoidance rule targeting “interest-like returns in certain foreign entities.” The FAF rule remains unfinished with no new draft legislation being released since the exposure draft in February 2011. The new law will only apply to income years beginning on or after Royal Assent of the legislation.

**Managed investment trusts and asset management.** Substantial reforms have been made and are continuing to emerge with respect to managed investment trusts (MITs). Broadly, MITs are collective-investment trusts that are listed, widely held or held by certain collective-investment entities.

Reforms already operational include the following:

- Reduced withholding taxes apply to distributions to certain non-resident investors (see *Withholding taxes*).
- MITs can make an irrevocable election to adopt capital treatment for gains and losses on the disposal of many investment assets. Newly established MITs must elect by the filing date for their first income tax return.

Reforms under development include modernization of the tax law for MITs, which is proposed to be effective from 1 July 2013.

Foreign private equity funds and their investors have been subject to close scrutiny, public guidance and litigation by the Australian Taxation Office on treaty shopping, source of gains, capital-revenue classification and the treatment of certain fiscally transparent entities.

**Investment manager exemption for foreign funds and investors.**

The government announced an enduring Investment Manager Regime (IMR) in November 2011, which is operational from 1 July 2011; the law and some detailed policy issues are expected to be developed by the government in 2012 through consultation before the legislation is introduced into parliament. This announcement also provides an IMR exemption for foreign investors that invest in widely held foreign funds if the funds use Australian investment intermediary and advisory services to invest in Australian assets, effective from 1 July 2011.

The government announced that previously announced conduit income exemption rules for foreign funds using Australian investment intermediaries are extended to also apply to foreign non-portfolio investments. In addition, a 2010 announcement foreshadowed a tax amnesty with respect to potential Australian tax exposures of certain foreign funds that had not previously filed any Australian tax returns. The intent is to remove tax risks for those funds for the 2010–11 and earlier years of income. Consultation is occurring on the draft law, and legislation is expected in 2012.

**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 the rate prescribed by Australia’s treaties. However, modern treaties pro-

vide for a 0% rate for government and unrelated financial institutions. 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 withholding tax rate may be reduced to 5%, 10% or 15% under a double tax treaty.

A concessional withholding tax regime applies to distributions by eligible “managed investment trusts” (see *Managed investment trusts*) to nonresidents, other than distributions of dividends, interest and royalties. The withholding tax rate is 30%, but a reduced rate applies if the nonresident’s address or place of payment is in a country that is listed in the regulations as an “information exchange country” (see *Countries listed as “information exchange countries”*). The reduced rate is 7.5% for the income years beginning on or after 1 July 2010.

**Countries listed as “information exchange countries.”** To attract the concessional withholding taxes rates for eligible managed investment trusts and to benefit from the new Investment Manager Regime, a country must be listed in the relevant regulation as an “information exchange country.” As of 1 January 2012, the regulation lists 56 countries including most countries that have entered into double tax treaties with Australia. However, the information exchange articles in existing tax treaties with Austria, Korea (South), the Philippines and Switzerland need to be updated before those treaty partners can be included in the list. Recent additions include the Bahamas, Belize, the Cayman Islands, Monaco, St. Kitts and Nevis, St. Vincent and the Grenadines, San Marino and Singapore (effective 1 July 2011) and Anguilla, Aruba, Belgium, Malaysia and the Turks and Caicos Islands (effective 1 January 2012).

**Demergers.** Tax relief is available 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, and the underlying ownership interests must not change as a result of the demerger. The rules provide 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

Under Australian domestic law, no withholding tax is imposed on franked dividends. Consequently, for dividends paid by Australian resident companies, the rates in the dividend column in the table below apply to unfranked dividends only. Franking of dividends is explained in Section B.

Australia does not impose withholding tax on interest paid to non-residents on certain publicly offered company debentures as well as on interest paid on state and federal government bonds.

The following table provides treaty withholding tax rates for dividends, interest and royalties.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Argentina	10/15 (b)	12	10/15 (c)
Austria (u)(v)(w)	15	10	10
Belgium	15	10	10
Canada (v)	5/15 (k)	10	10
Chile (z)	5/15 (aa)	5/10 (bb)	5/10 (cc)
China	15	10	10
Czech Republic	5/15 (l)	10	10
Denmark	15	10	10
Fiji	20	10	15
Finland (w)	0/5/15 (a)	0/10 (g)	5
France (w)	0/5/15 (q)	0/10 (g)	5
Germany	15	10	10
Hungary	15	10	10
India (v)	15	15	10/15 (c)
Indonesia	15	10	10/15 (c)
Ireland	15	10	10
Italy (w)	15	10	10
Japan	0/5/10/15 (o)	0/10 (g)	5
Kiribati	20	10	15
Korea			
(South) (u)(v)(w)	15	15	15
Malaysia(w)	0/15	15	15
Malta	15	15	10
Mexico (v)	0/15 (i)	10/15 (h)	10
Netherlands (p)(w)	15	10	10
New Zealand (s)	0/5/15 (x)	0/10 (y)	5
Norway (w)	0/5/15 (a)	0/10 (g)	5
Papua New Guinea	15	10	10
Philippines (u)	15/25 (d)	15	25
Poland	15	10	10
Romania	5/15 (e)	10	10
Russian Federation	5/15 (j)	10	10
Singapore	15	10	10
Slovak Republic	15	10	10
South Africa	5/15 (r)	0/10 (g)	5
Spain	15	10	10
Sri Lanka	15	10	10
Sweden	15	10	10
Switzerland (u)(w)	15	10	10
Taiwan (v)	10/15 (m)	10	12.5
Thailand	15/20 (f)	10/25 (n)	15
Turkey (dd)	5/15 (ee)	0/10 (ff)	10
United Kingdom (t)	0/5/15 (a)	0/10 (g)	5
United States	0/5/15 (a)	0/10 (g)	5
Vietnam	15	10	10
Nontreaty countries	30	10	30

- (a) 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%.

- (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) The 15% rate applies if a tax rebate or credit is granted to the beneficial owner of the dividends.
- (e) The 5% rate applies to franked dividends if the recipient is a company that holds directly at least 10% of the capital of the payer.
- (f) 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.
- (g) The 0% rate applies to government institutions and unrelated financial institutions. The 10% rate applies in all other cases.
- (h) 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.
  - The payer is a bank or the purchaser of machinery and equipment with respect to a sale on credit.
- (i) The 0% rate applies if the recipient of the dividends is a company holding directly at least 10% of the voting power in the payer.
- (j) The 5% rate applies to dividends paid to a company that holds at least 10% of the capital of the payer and that has invested at least A\$700,000 (or the equivalent in Russian rubles) in the payer.
- (k) 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.
- (l) The 5% rate applies to franked dividends.
- (m) The 10% rate applies to franked dividends.
- (n) The 10% rate applies to interest derived by financial institutions or insurance companies.
- (o) The rate is 0% or 5% if the recipient holds at least 80% or 10%, respectively, of the voting power in the payer. However, a 15% withholding tax rate applies 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.
- (p) 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.
- (q) The dividend withholding tax rate is 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 is 15% in all other cases.
- (r) 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 company paying the dividend. The 15% rate applies to other dividends.
- (s) The withholding tax rates listed in the table are the rates under a new tax treaty between Australia and New Zealand, which entered into force on 19 March 2010. The treaty applies to withholding tax on income derived by nonresidents on or after 1 May 2010.
- (t) Australia is renegotiating its double tax treaty with the United Kingdom. An exemption from withholding tax for interest payments to related financial institutions is one area for potential change. However, further details are not yet available.
- (u) These countries are not currently listed as "information exchange countries" (see Section E).
- (v) Treaty negotiations with Austria, Canada, Korea (South), Mexico, and Taiwan are expected to enter into a more active phase.
- (w) 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 try to renegotiate their tax treaties if the withholding tax rates in another of Australia's tax treaties are lower.
- (x) The 0% rate applies if the recipient holds at least 80% of the payer or if the dividends are paid with respect to portfolio investments by government bodies including government investment funds. The 5% rate applies if the recipient holds at least 10% of the payer. The 15% rate applies to other dividends.
- (y) The 0% rate applies to interest paid to government institutions and unrelated financial institutions. The 10% rate applies in all other cases.

- (z) Australia and Chile signed a new tax treaty on 10 March 2010, which has not yet entered into force. The withholding tax rates listed in the table will apply beginning on the first day of the second month following the entry into force of the treaty.
- (aa) The 5% rate will apply if the recipient beneficially owns at least 10% of the voting power in the company paying the dividends. The 15% rate will apply in all other cases.
- (bb) The 5% rate will apply if the recipient is a financial institution that is unrelated to and dealing wholly independently with the payer. The 10% rate will apply in all other cases.
- (cc) The 5% rate will apply to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate will apply to other royalties.
- (dd) Australia and Turkey signed a new tax treaty on 29 April 2010, which has not yet entered into force. The withholding tax rates listed in the table will apply beginning on 1 January of the year following the year of entry into force of the treaty.
- (ee) The 5% rate will apply to dividends paid by a company that is resident in Australia to a company (other than a partnership) that holds directly at least 10% of the voting power in the company paying the dividends. The 5% rate will apply to dividends paid by a company that is resident in Turkey if the dividends are paid out of profits that have been subjected to the full rate of corporation tax in Turkey and if the dividends are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends. The 15% rate will apply in all other cases.
- (ff) Interest derived from the investment of official reserve assets by the government of a contracting state, its central bank or a bank performing central banking functions in that state will be exempt from tax in the other contracting state. The 10% rate will apply 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 and European Union (EU) 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*.) 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), €3,500 for a stock corporation (Aktiengesellschaft, or AG) and €6,000 for a European stock corporation (Societas Europea, or SE). 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. Capital losses on and depreciation of the participation may be deducted from taxable income, spread over a period of seven years.

*International participation.* 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 exercised, capital gains are subject to tax, and decreases in value and capital losses are tax-deductible. Capital losses and depreciation of the participation may then be deducted from the taxable income, spread over a period of seven years. In the event of insolvency or liquidation, final losses may be deducted even if the option for tax-effectiveness was not exercised. The option does not affect the tax treatment of dividends.

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

- The subsidiary earns primarily specified types of passive income, which are interest, income from leasing property other than land and buildings and capital gains (active business test).
- The subsidiary is not subject to income tax at an effective rate of more than 15% in its home country (low taxation test).

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%. For dividends, income taxes paid by the foreign subsidiary (underlying tax), as well as withholding taxes imposed, 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. Effective from 2011, if the creditable foreign tax exceeds the amount of tax to be paid in Austria, the excess amount of foreign tax can be carried forward and credited in future tax periods.

*International portfolio participation.* Dividends from participations that do not meet the criteria for international participations are subject to tax at the regular corporate tax rate. However, shareholdings in EU corporations or certain European Economic Area (EEA) corporations (currently only Norway) qualify as international portfolio participations. Dividends from such international

portfolio participations are exempt from tax. Effective from 2011, dividends distributed by companies resident in third countries that have agreed to exchange tax information are also exempt from tax. Capital gains (and losses) are tax-effective (the treatment corresponds to the treatment of national participations).

If a foreign entity is subject to a tax rate lower than 15%, the exemption for dividends from portfolio participations does not apply. Instead, dividends are taxed at the normal Austrian corporate tax rate of 25%. Income taxes paid by the foreign subsidiary, as well as withholding taxes imposed, are credited against the income tax payable by the Austrian parent company (this represents a switch from the exemption method to the credit method). Effective from 2011, if the creditable foreign tax exceeds the amount of tax to be paid in Austria, the excess amount of foreign tax can be carried forward and be credited in future tax periods.

Effective from 2011, dividends from international participations (including portfolio participations) are not exempt from tax in Austria if such payments are deductible for tax purposes in the country of the distributing company.

*Expenses.* Business expenses are generally deductible. However, an exception applies to expenses that are related to tax-free income. Although dividends from national and international participations and portfolio participations are tax-free under the Austrian participation exemption, interest incurred on the acquisition of such participations is deductible for tax purposes. However, interest incurred in the 2011 fiscal year and future years on the acquisition of participations from affiliates is not deductible if it is related to tax-free dividend income.

**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; 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 or indirectly an interest of at least 10% in the distributing company.
- A parent company resident in another EU country holding directly or indirectly an interest of at least 10% in the distributing company for at least one year.

In addition, the withholding tax rate may be reduced for dividends paid to foreign shareholders in accordance with tax treaties. Depending on the situation, this reduction may be in the form of an upfront reduction at source or a refund of withholding tax.

For dividends paid to parent companies resident in the EU or EEA (if the EEA country grants full administrative assistance; currently only Norway meets this condition) that are subject to

tax in Austria, Austrian withholding tax is refunded if the shareholder can prove that the withholding tax cannot be credited in the state of residence of the shareholder under tax treaty law.

**Interest.** Interest paid on loans (for example, intercompany loans) is not subject to withholding tax in Austria. 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. EU withholding tax may apply if certain requirements are met.

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 30 April (30 June, if submitted electronically) of the following calendar year. Extensions may be granted.

Companies are required to make prepayments of corporate income tax. The amount is generally based on the amount of tax payable for the preceding year, and payment must be 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.** In general, resident companies are taxed in Austria on their worldwide income, regardless of where that income is sourced. However, the following exceptions exist:

- The Finance Ministry may, at its discretion, allow certain types of income that have their source in countries with which Austria has not entered into a 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. Under a decree of the Ministry of Finance, an exemption is granted in case of active income and taxation of at least 15%. Otherwise, only a credit of foreign taxes is allowed.
- Income earned in countries with which Austria has a double tax treaty is taxable or exempt, depending on the treaty.
- 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*).

- Dividends from foreign portfolio shareholdings in companies resident in countries that have agreed to exchange tax information are exempt from tax unless the subsidiary is low-taxed (see *Participation exemptions*).

### 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 acts. 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>X</u>

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

**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)
- 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.** For certain assets, such as buildings and passenger cars, the tax law provides fixed depreciation 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 (cash payment) equal to 10% of certain expenses for research and experimental development (according to the Frascati manual, these expenses consist of material costs, labor costs, energy costs and attributed interest). The R&D must be conducted by an Austrian company or an Austrian permanent establishment of a foreign company.

**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 tax group must be an Austrian corporate entity (or branch of an EU/EEA corporate entity) that has held 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 consortium. Only corporations (not partnerships) qualify as group members. If the holding 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 (only an agreement on the split of the tax burden is required). The tax group must exist for at least three full financial years. Otherwise, retroactive taxation on a stand-alone basis applies.

Group taxation also allows a cross-border tax consolidation if the foreign subsidiary is directly held by an Austrian parent (first tier) 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 group 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 are added to the Austrian profit 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 of losses. Foreign losses must also be added to the Austrian income tax base if the foreign subsidiary leaves the group. A recapture is also required if a significant reduction occurs in the size of the foreign subsidiary's business. This measure is designed to prevent dormant foreign entities from remaining in the group to avoid the recapture of foreign losses. Relief for capital losses 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, goodwill depreciation (from a share deal) over a period of 15 years is possible. The goodwill 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 long-term assets (primarily real estate). The basis for the goodwill 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 following table 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	4.86 to 4.94
Community tax	3
Real estate sales tax (including 1.1% registration fee)	4.6
Capital duty, on contributions to capital of companies	1
Stamp duties, on certain legal transactions, such as leases and hire contracts	0.8 to 2
Stability tax for banks	
Adjusted balance sheet total	0.055 to 0.085
Derivatives	0.013

#### 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 tax 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.
- 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 and published a summary of the interpretation of the OECD guidelines by the Austrian tax administration in 2010. 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
	%	%	%	%	%	%
Albania	15	5	5	5	5	5
Algeria	15	5	10	10	10	10
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)
Bahrain	0	0	0	0	0	0
Barbados	15	5	0	0	0	0
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	5	0	5	5	5	5
Canada	15	5	10	10	10 (k)	10 (k)
China	10	7	10	10	10	10
Croatia	15	0	5	5	0	0
Cuba	15	5	10	10	5	5
Cyprus						
From Cyprus	0	0	0	0	0	0
From Austria	10	10	0	0	0	0
Czech Republic	10	0	0	0	5 (j)	5 (j)
Denmark	15	0	0	0	0	0
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	0	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	15	5	8	8	7	7
Hong Kong SAR	10	0	0	0	3	3
Hungary	10	10	0	0	0	0
India	10	10	10	10	10	10

	Dividends		Interest (a)		Royalties	
	A	B	C	D	E	F
	%	%	%	%	%	%
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
Italy	15	15	10	10	0	10
Japan	20	10	10	10	10	10
Kazakhstan	15	5	10	10	10	10
Korea (South)	15	5	10	10	10(n)	10(n)
Kuwait	0	0	0	0	10	10
Kyrgyzstan	15	5	10	10	10	10
Latvia	10	5	10	10	5/10(q)	5/10(q)
Liechtenstein	15	15	10	10	10(l)	10(l)
Lithuania	15	5	10	10	5/10(q)	5/10(q)
Luxembourg	15	5	0	0	0	10
Macedonia	15	0	0	0	0	0
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
New Zealand	15	15	10	10	10	10
Norway	15	0	0	0	0	0
Pakistan	15	10	15	15	10	10
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	5	0	3	3	3	3
Russian						
Federation	15	5	0	0	0	0
Saudi Arabia	5	5	5	5	10	10
San Marino	15	0	0	0	0	0
Serbia	15	5	10	10	5/10	5/10
Singapore	10	0(m)	5	5	5	5
Slovak Republic	10	10	0	0	5	5
Slovenia	15	5	5	5	5	5
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	0	0
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	15	5	15(v)	15(v)	10	10

	Dividends		Interest (a)		Royalties	
	A	B	C	D	E	F
	%	%	%	%	%	%
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
Venezuela	15	5	10 (e)	10 (e)	5	5
Vietnam	15	5/10 (t)	10	10	10	7.5 (u)
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, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The withholding tax rates under these treaties are listed in the above table.

(e) Interest paid by banks is subject to a 4.95% withholding tax.

(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 rate is 0% for royalties paid for literary, artistic and scientific 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) The rate is 5% for royalties paid to licensors engaged in industrial production.

(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) The 5% rate applies to participations of at least 70%. The 10% rate applies to participations of at least 25%.

(u) The rate is 7.5% for technical services.

(v) The rate is reduced to 10% for interest received from a bank. Interest on loans granted by the Österreichische Kontrollbank to promote exports or similar institutions in Turkey is subject to a withholding tax rate of 5%.

The tax treaty with Argentina was suspended by Argentina, effective from 1 January 2009.

# Azerbaijan

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

## A. At a glance

Corporate Profits Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Permanent Representation Tax Rate (%)	20
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 resident legal entities are subject to tax on their worldwide income. For tax purposes, Azerbaijani resident legal entities are entities incorporated in Azerbaijan and entities that have their effective management located in Azerbaijan, including 100%-owned subsidiaries of foreign companies.

Nonresident legal entities are subject to tax on profits earned through a permanent representation 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
- 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 20%.

**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 (AZN) at the daily exchange rate determined by the Central Bank of Azerbaijan.

Statutory norms limit the deductions for certain categories of expenses, such as business travel expenses, repair expenses, interest paid on foreign borrowings and interest paid between related parties. 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 following table 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 (AZN) 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 Central 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	0/10	5/10
Belarus	15	0/10	10
Belgium	5/10/15	0/10	5/10
Bulgaria	8	0/7	5/10
Canada	10/15	0/10	5/10
China	10	0/10	10
Czech Republic	8	0/5/10	10
Estonia	5/10	0/10	10
Finland	5/10	0/10	5/10
France	10	0/10	5/10
Georgia	10	0/10	10
Germany	5/15	0/10	5/10
Greece	8	0/8	8
Hungary	8	0/8	8
Iran	10	0/10	10
Italy	10	0/10	5/10
Japan	15	0/10	10
Kazakhstan	10	0/10	10
Korea (South)	7	0/10	5/10
Latvia	5/10	0/10	5/10
Lithuania	5/10	0/10	10
Luxembourg	5/10	0/10	5/10
Moldova	8/15	0/10	10
Norway	10/15	0/10	10
Netherlands	5/10	0/10	5/10
Poland	10	0/10	10
Qatar	7	0/7	5
Romania	5/10	0/8	10
Russian Federation	10	0/10	10
Switzerland	5/15	0/5/10	5/10
Tajikistan	10	0/10	10
Turkey	12	0/10	10
Ukraine	10	0/10	10
United Arab Emirates	5/10	0/7	5/10
United Kingdom	10/15	0/10	5/10
Uzbekistan	10	0/10	10
Nontreaty countries	10	10	14

Treaties with Jordan, Kuwait, Pakistan, Serbia and Slovenia are in the ratification stage. Azerbaijan has initialed tax treaties with

Denmark, Montenegro, Oman and Sweden. Treaties with India, Kyrgyzstan, Macedonia, Morocco, San Marino, Saudi Arabia and Turkmenistan are in the negotiation stage.

## 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 2012.

**Business license fees.** For corporations designated resident for exchange-control purposes, business revenue 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 required to pay an annual fee of B\$100. For most other professional businesses, the business license fee equals 1% of revenue.

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 annual license fees range from B\$1,000 to B\$3,750,000 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 annual license fee is B\$3,000. 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 following table 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	4% to 12%
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%

<b>Nature of tax</b>	<b>Rate</b>
Real property tax; application of tax varies depending on appraised value, location, nationality of owner and development of property	0.75% to 2%
National insurance contributions on weekly wages up to B\$500 or on monthly wages up to B\$2,167; for employees earning B\$60 or more a week; paid by	
Employer	5.9%
Employee	3.9%

### **E. Foreign-exchange controls**

Corporations doing business in the Bahamas fall into the categories of resident or 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 does not have any existing tax treaties. The Bahamas has entered into tax information exchange agreements with various countries.

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## **Bahrain**

(Country code 973)

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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. Other significant taxes**

The following table summarizes other significant taxes.

Nature of tax	Rate
Customs duties; effective from 1 January 2003, the customs duties of the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) are unified; the guidelines for implementation of the unified tariff are being developed; Bahrain applies the unified tariff in accordance with the Harmonized System codes, issued by the World Customs Organization (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 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; in general, products are divided into four groups	Free duty/ 5%/100%/125%
Rates for the four groups	
Social insurance contributions	
Pension fund contributions; applicable to base salaries of Bahraini nationals	
Employer	9
Employee	6

<b>Nature of tax</b>	<b>Rate</b>
Insurance against employment injuries; payable by employers; applicable to base salaries of Bahraini nationals and expatriates	3
Unemployment insurance; payable by employees; applicable to Bahraini nationals and expatriates	1
Training levy; payable by employers; applicable to base salaries of expatriate employees	4
Municipal tax; payable by companies and individuals renting property in Bahrain; the tax rate varies according to the nature of the property and the payer of the utilities (that is, landlord or tenant)	7 to 10

#### **D. Foreign-exchange controls**

Bahrain does not impose foreign-exchange controls.

#### **E. Tax treaties**

Bahrain has entered into tax treaties with Algeria, Austria, Belarus, Brunei Darussalam, Bulgaria, China, Egypt, France, Iran, Ireland, Jordan, Lebanon, Luxembourg, Malaysia, Morocco, Netherlands, Pakistan, Philippines, Singapore, Sudan, Syria, Thailand, Turkey, Uzbekistan and Yemen.

Bahrain has signed tax treaties with Belgium, Bermuda, the Czech Republic, Estonia, Georgia, Isle of Man, Malta, Mexico, Seychelles, Sri Lanka, Turkmenistan and the United Kingdom, but these treaties are not yet in force.

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## **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 (a)
Withholding Tax (%)	
Payments to Nonresidents	
Dividends	15 (b)(c)
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) A 15% rate applies to manufacturing companies and to net rental income derived from residential property.
- (b) This is a final tax.
- (c) The rate is reduced to 0% if the dividends are paid out of foreign-source income.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Companies and unincorporated associations that are resident in Barbados are subject to corporation tax. Resident and domiciled companies are subject to corporation tax on their worldwide income, regardless of whether the income is remitted to Barbados. Resident companies that are not domiciled in Barbados are subject to corporation tax on income derived from Barbados and income from foreign sources to the extent that such foreign income is remitted to Barbados. Nonresident companies carrying on business through a branch pay tax on Barbados-source income only. Income is considered to be 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. The domicile of a company is based on the country of incorporation. Consequently, a company incorporated in Barbados is domiciled there.

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

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
International 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
Qualifying Insurance Companies	
General insurance	1.75*
Life insurance	0.35*

\* This is the minimum effective tax rate.

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 0.35% or 1.75%, depending on the company's activities.

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

- Corporation tax rate of 15%
- Exemption from withholding tax on dividends or interest paid
- Exemption from import duty on plant and equipment
- 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.
- 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 is the period for which the accounts of the business are normally prepared. 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 corporation tax.

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

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.

**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 annual allowance of 100% is granted with respect to capital expenditure on software. 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 percent of expenditure on intellectual property is deductible over a 10-year period. In addition, 20% of expenditure on energy audits and the retrofitting of buildings or on the installation of systems to provide electricity from sources other than fossil fuels is deductible over a period of 5 years.

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% investment allowance is granted for new plant and machinery to be used in manufacturing and refining sugar and in manufacturing products from clay and limestone. In addition, manufacturing companies are allowed an annual allowance of 150% for assets used in the industry.

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
- 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	17.5
Hotel accommodation	8.75
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\$4,090; paid by	
Employer	11.25
Employee	10.1
Self-employed individual	16.1

#### 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.** No thin-capitalization rules are imposed 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 (a)	0	0
Botswana	12 (b)	10	10
Canada (c)	15	15	10
CARICOM (d)	0	15	15
China	10 (e)	10	10
Cuba	15 (b)	10	5
Czech Republic (s)	15 (u)	5	10 (v)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Finland (c)	15 (a)	5	5
Ghana (f)	7.5 (a)	7.5 (g)	7.5
Luxembourg	15 (h)	0	0
Malta	15	5	5
Mauritius	5	5	5
Mexico	10 (a)	10 (i)	10 (j)
Netherlands	15 (k)	5	5 (l)
Norway (c)	15 (a)	5	5
Panama	7.5 (m)	7.5 (g)	7.5
Portugal (s)	15 (u)	10	5
Seychelles	5	5	5
Spain	5 (t)	0	0
Sweden (c)	15 (a)	0 (n)	5
Switzerland	35	– (o)	0 (p)
United Kingdom (c)	0 (l)	15	0 (q)
United States (q)	15 (a)	5	5
Venezuela	10 (r)	15 (g)	10

- (a) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 10% of the capital of the payer of the dividends.
- (b) 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.
- (c) 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.
- (d) This is the Caribbean Community and Common Market (CARICOM) double tax treaty. Income is taxed in the country of source only.
- (e) The rate is reduced to 5% if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends.
- (f) This treaty has been ratified by Barbados only. Consequently, the provisions of the treaty are not yet effective.
- (g) The rate is reduced to 5% if the interest is derived by a bank resident in Barbados.
- (h) The rate is reduced to 0% 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 company paying the dividends for an uninterrupted period of at least 12 months before the decision to distribute the dividends.
- (i) Under the Mexican tax law, the rate is reduced to 4.9% for interest paid to international banks.
- (j) The term “royalties” includes payments derived from the alienation of rights or property that are contingent on the productivity, use or disposition of such property.
- (k) 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.
- (l) The rate is reduced to 0% for copyright royalties paid for the use, or the right to use, literary, artistic or scientific works (including royalties paid for cinematographic films, and films, discs or tapes for radio or television broadcasting).
- (m) This rate equals 75% of the statutory nominal rate applicable at the time of dividend distribution. 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.
- (n) The income is exempt from withholding tax under the laws of the other treaty country.
- (o) The treaty does not contain an interest article. Consequently, the normal tax rate applies.
- (p) The rate is 15% for royalties paid for motion pictures or television films.
- (q) 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.
- (r) 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.

- (s) This treaty has been signed by both parties, but is has not yet been ratified. Consequently, the provisions of the treaty are not yet in effect.
- (t) The rate is reduced to 0% if the beneficial owner of the dividends is a company that directly owns at least 25% of the capital of the company paying the dividends.
- (u) The rate is reduced to 5% if the beneficial owner of the dividends is a company that directly owns at least 25% of the capital of the company paying the dividends.
- (v) This rate is reduced to 5% for royalties paid for copyrights of literary, artistic or scientific works, including cinematographic films, and films or tapes for radio or television broadcasting.

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 (a)	0	0
Botswana	12 (b)	10	10
Canada	15	15	10
CARICOM (c)	0	15	15
China	10 (d)	10	10
Cuba	15 (b)	10	5
Czech Republic (r)	15 (s)	5	10 (u)
Finland	15 (a)	5	5
Ghana (e)	7.5 (a)	7.5 (f)	7.5
Luxembourg	15 (g)	0	0
Malta	15 (h)	5	5
Mauritius	5	5	5
Mexico	10 (a)	10	10 (i)
Netherlands	15 (j)	5	5 (k)
Norway	15 (a)	5	5
Panama	11.25 (l)	7.5 (m)	7.5
Portugal (r)	15 (s)	10	5
Seychelles	5	5	5
Spain	5 (t)	0	0
Sweden	15 (a)	5	5
Switzerland	15	— (n)	0
United Kingdom	0	15	0 (o)
United States	15 (a)	5	5
Venezuela	10 (h)	15 (p)	10
Nontreaty countries	15 (q)	15	15

- (a) The rate is reduced to 5% if the beneficial owner of the dividends is a company that owns at least 10% of the capital of the payer of the dividends.
- (b) 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.
- (c) This is the CARICOM double tax treaty. Income is taxed in the country of source only.
- (d) The rate is reduced to 5% 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 company paying the dividends.
- (e) This treaty has been ratified by Barbados only. Consequently, the provisions of the treaty are not yet effective.
- (f) The rate is reduced to 5% if the interest is derived by a bank that is resident in Ghana.
- (g) This rate is reduced to 0% if the beneficial owner is a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months before the decision to distribute the dividends.
- (h) 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.

- (i) The term “royalties” includes payments derived from the alienation of rights or property that are contingent on the productivity, use or disposition of such property.
- (j) 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 and if the recipient of the dividends is a company resident in the Netherlands that is not subject to Netherlands company tax on the dividends.
- (k) The rate is reduced to 0% for royalties paid for 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.
- (l) The rate equals 75% of the statutory nominal rate applicable at the time of dividend distribution. It 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.
- (m) The rate is reduced to 5% if the interest is derived by a bank that is resident in Panama.
- (n) The treaty does not contain an interest article. Consequently, the normal tax rate applies.
- (o) The rate is 15% for royalties paid for motion picture or television films.
- (p) The rate is reduced to 5% for interest paid to banks.
- (q) The rate is reduced to 0% if the dividends are paid out of income earned from foreign sources.
- (r) This treaty has been signed by both parties, but is has not yet been ratified. Consequently, the provisions of the treaty are not yet in effect.
- (s) The rate is reduced to 5% if the beneficial owner of the dividends is a company that directly owns at least 25% of the capital of the company paying the dividends.
- (t) The rate is reduced to 0% if the beneficial owner of the dividends is a company that directly owns at least 25% of the capital of the company paying the dividends.
- (u) This rate is reduced to 5% for royalties paid for copyrights of literary, artistic or scientific works, including cinematographic films, and films or tapes for radio or television broadcasting.

## Belarus

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### Business Tax Advisory

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## A. At a glance

Corporate Profits Tax Rate (%)	24 (a)
Capital Gains Tax Rate (%)	24
Withholding Tax Rate (%) (b)	
Dividends	12
Interest	10 (c)
Royalties	15
Freight and Transportation	6
Capital Gains	12
Other Income	15 (d)

## Net Operating Losses (Years)

Carryback	0
Carryforward	0

- 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.
- Withholding tax applies to income derived from sources in Belarus 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.
- This withholding tax applies to income derived from debt obligations, such as borrowings or loans, that are not formalized by securities.
- The Tax Code 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 that carry 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 sources in Belarus 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 Sections A and F.

**Rates of corporate profits tax.** The standard corporate profits tax rate is 24%.

Reduced tax rates apply to certain businesses that meet specified conditions, including the following:

- Profits of producers of laser-based optical devices (on the condition that these devices account for 50% or more of the total value of production): 10%
- Profits of producers of high-tech products: 12%

A corporate profits tax rate of 12% also applies to the following types of income:

- Dividends paid to a Belarusian company
- Income derived from the sale of shares in the charter capital (equity interests or shares) of companies established in Belarus

**Tax exemptions and reductions.** Belarus offers various tax exemptions and reductions. Some of these exemptions and reductions are summarized below.

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, up to 50% of taxable profits
- Amounts used to finance state social objects (including can- teens, cinemas, hospitals, hostels, and kindergartens), up to 5% of taxable profits

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

- Manufacturing of food products for infants
- Services of hotels located in tourist locations approved by the President of Belarus for the first three years of operation

- Plant growing (except for flowers and ornamental plants), livestock farming (except for furs), fish breeding, and bee farming
- Transactions with government securities, securities of the National Bank of the Republic of Belarus and some other securities
- Roadside services of objects located close to republican roads within five years from the date of set-up
- Investment of insurance reserves on voluntary life insurance agreements if the profit is used to increase funds accumulated in the personal accounts of the policyholders

All the benefits described above can be claimed 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). An FEZ resident is exempt from profits tax for five years beginning on the date on which profits are declared for the first time. After the 5-year period ends, the FEZ resident pays corporate profits tax at 50% of the standard rate, but the tax rate may not exceed 12%.

In addition, an FEZ resident may apply a reduced value-added tax (VAT) rate of 10%.

The benefits mentioned above are provided to an FEZ resident with respect to the following profits:

- Profits received from goods (works and services) manufactured by an FEZ resident and sold to other FEZ residents, foreign legal entities or foreign individuals
- Profits from goods manufactured by a resident of an FEZ and realized in Belarus if the goods are defined as substitutes for imported goods on the list specified by the government and approved by the President of Belarus

**Special tax regimes.** Belarus has several tax regimes, which are summarized below.

*Simplified system of taxation.* Business entities may pay a unified tax under a simplified system of taxation. Business entities that pay the unified tax are not subject to corporate profits tax, and under certain conditions, to VAT (and some other taxes). Under this system, the tax due is either 8% (5% in the case of a rural location) of gross revenues or, if the business entity continues to pay VAT, 6% (3% in the case of a rural location) of gross revenues. A 15% tax rate applies to organizations and individual entrepreneurs who use the mark-up as their tax base. The mark-up equals gross revenues less the input cost of goods and services.

*Unified tax on agricultural producers.* Agricultural producers may pay a unified tax at a rate of 2% of gross revenues from the sale of goods (works and services) and other property and income derived from nonsales transactions. An agricultural entity can pay the unified tax if its annual gross revenue consists of at least 50% of revenue from the sale of its own manufactured crop products (excluding flowers and ornamental plants), livestock products (excluding fur farming), fish breeding and bee breeding products.

*Tax on gambling industry.* 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).

*Tax on income generated by lottery sales.* Lottery sales are subject to an 8% tax rate on the gross revenue less the awarded prize fund.

*Tax on electronic interactive games.* The tax base for the tax on electronic interactive games equals the difference between the amount of revenue from electronic interactive games and the composed winning fund (fund to be paid to the winner). The tax rate is 8%. Revenue from electronic interactive games is exempt from corporate profits tax. Turnover received from stakes (bets) with respect to the holding of electronic interactive games is exempt from value-added tax.

*Taxation of commercial organizations located and operating in localities with a population under 50,000.* Commercial organizations that are established after 1 April 2008 are exempt from corporate profits tax for seven years and from various other taxes for five years beginning on the date of their establishment if they are located and operating in localities with a population under 50,000 and if such localities are included in the list of settlements approved by the Council of Ministers and agreed to by the President of Belarus. These commercial organizations are exempt from the agricultural contribution (see Section D) with respect to the sale of goods (works and services) of their own production and from other taxes and dues, except for VAT, stamp duty, customs duties, ecological tax and taxes paid when acting as the tax agent.

*Taxation of organizations located in rural settlements.* Organizations located in rural settlements and conducting activities with respect to the production of goods (performance of works and rendering of services) are exempt from profits tax and the assets tax (on assets located in such settlements) from 1 January 2008 through 31 December 2012.

*Taxation of residents of the High Technologies Park.* The High Technologies Park was established in 2005 for a period of 15 years. Park residents are exempt from taxes, contributions and other obligatory payments to the state budget and state nonbudget funds (for example, state social security funds) with respect to revenue derived from the sale of goods (works, services and ownership rights for intellectual property). Business entities operating in the park may engage only in the high technology activities set forth in the Decree of the President of Belarus “Concerning the Park of High Technologies.”

*Taxation of the members of the Infopark Science and Technology Association.* The members of the Infopark Science and Technology Association are exempt from taxes, the agricultural contribution (see Section D), and other obligatory payments to state nonbudget funds with respect to revenue derived from the sale of information technologies and services for the development of such technologies, except for profits tax paid at a rate of 5% and Social Fund contributions.

**Capital gains.** Capital gains derived from the alienation of shares in the charter capital of Belarusian companies are taxed at a corporate profits tax rate of 12%. The same tax rate applies to gains from operations involving securities, except for bonds which are exempt from corporate profits tax in certain cases.

Capital gains derived by nonresidents without a permanent establishment in Belarus are subject to a 12% withholding tax, unless otherwise provided by a double tax treaty.

**Administration.** The basic tax reporting period is the calendar year. The tax return must be filed by 20 March of the year following the reporting year.

Advance payments of corporate profits tax must be made quarterly. The amount of corporate profits tax payable must be determined using one of the following methods, at the discretion of the taxpayer:

- Based on previous year corporate profits tax. The company pays quarterly one-fourth of the amount of corporate profits tax for the previous year. This method may not be used if the taxpayer did not have corporate profits tax payable at the end of the previous year, because for example, it had negative financial results or used tax incentives.
- Based on expected amount of corporate profits tax. The company pays quarterly one-fourth of the corporate profits tax, calculated based on the expected level of profit according to the results of the current tax period. However, the amount of tax paid may not be less than 80% of real corporate profits tax according to the results of the current tax period.

Nonpayment or incomplete payment of tax is subject to a fine of 20% of the unpaid tax. A fine for late submission of the tax return can be up to 10% of the unpaid tax. In addition to these fines, a penalty is applied for every day of delay in tax payment. The penalty is assessed on the basis of the refinancing rate established by the National Bank of the Republic of Belarus (currently, 35%).

**Dividends.** Dividends paid to foreign legal entities without a permanent establishment in Belarus are subject to a 12% withholding tax, unless otherwise provided by a double tax treaty. The distribution of dividends to resident companies is also subject to withholding tax.

**Foreign tax relief.** A tax credit for foreign tax paid by, or withheld from, a Belarusian tax payer is not granted unless directly provided for in a relevant double tax treaty.

### C. Determination of taxable profits

**General.** Taxable profits are based on the financial statements prepared according to the accounting standards of Belarus. The taxable profits are determined by adjusting the profits reported in the financial statements by items stipulated by the Tax Code. Adjustments relate to special income and expense items and usually act to restrict tax-deductible expenses. For example, payments for labor remuneration are deductible within certain limits or if certain conditions are met. The list of deductible sales expenses is open. Special rules determine the taxable profits of banks and insurance companies.

**Inventories.** Inventories are carried at actual cost. The allowed accounting methods for determining cost value are cost of each unit, average cost and valuation price, including first-in, first-out (FIFO).

**Provisions.** Banks can establish deductible provisions for unrecoverable loans and securities. The National Bank of the Republic of Belarus regulates the establishment of such provisions.

**Tax depreciation.** The amount of depreciation reported in the financial statements may be deducted for tax purposes if the fixed assets are used in an entrepreneurial activity.

**Relief for losses.** Belarusian tax law does not provide for loss carry-backs 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

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT)	
Standard rate	20
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
Contributions to innovation funds; rate varies according to the industry or business activity; rate applied to cost of production or sales	0.25 to 19
Payroll taxes	
Social fund contributions; paid by the employer	34
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
Asset tax; annual tax imposed on real estate, including construction-in-progress	1 to 2
Local taxes and dues	Various
Offshore levy; imposed on payments or transfers of cash by residents to nonresidents 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, the National Bank of the Republic of Belarus, The State Control Committee and State Customs 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 Armenia, Austria, Azerbaijan, Bahrain, Belgium, Bulgaria, China, Croatia, Cyprus, the Czech Republic, Egypt, Estonia, Finland, Germany, Hungary, India, Iran, Ireland, Israel, Italy, Kazakhstan, Korea (North), Korea (South), Kyrgyzstan, Kuwait, Latvia, Lebanon, Lithuania, Macedonia, Moldova, Mongolia, the Netherlands, Oman, Pakistan, Poland, Qatar, Romania, the Russian Federation, Saudi Arabia, the Slovak Republic, Slovenia, South Africa, Sweden, Switzerland, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Venezuela, Vietnam and Yugoslavia.

Belarus has also signed a double tax treaty with Libya, but this treaty has not yet been ratified.

Belarus honors several of the double tax treaties entered into by the former USSR, including treaties with Denmark, France, Japan, Malaysia, Spain, the United Kingdom and the United States. The Ministry of Taxes and Collections has indicated that the treaties with Canada and Norway are no longer effective.

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

	Dividends	Interest	Royalties
	%	%	%
Armenia	10/15 (a)	0/10 (v)	10
Austria	5/15 (e)	0/5 (gg)	5
Azerbaijan	15	0/10 (v)	10
Bahrain	5	5	5
Belgium	5/15 (e)	0/10 (z)	5
Bulgaria	10	0/10 (v)	10
China	10	0/10 (v)	10
Croatia	5/15 (e)	10	10
Cyprus	5/10/15 (d)	5	5
Czech Republic	5/10 (rr)	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
Finland	5/15 (e)	0/5 (hh)	5
Germany	5/15 (dd)	0/5 (ee)	3/5 (ff)
Hungary	5/15 (e)	5	5
India	10/15 (g)	0/10 (v)	15
Iran	10/15 (g)	0/5 (v)	5
Ireland	0/5/10 (oo)	5	5

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Israel	10	0/5/10 (t)	5/10 (cc)
Italy	5/15 (e)	0/8 (mm)	6
Japan (q)	15	0/10 (ss)	0/10 (n)
Kazakhstan	15	0/10 (v)	15
Korea (North)	10	0/10 (v)	10
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
Macedonia	5/15 (e)	10	10
Malaysia (q)	15	0/15 (v)	10/15 (o)
Moldova	15	10	15
Mongolia	10	0/10 (nn)	10
Netherlands	0/5/15 (e)(w)	0/5 (u)	3/5/10 (f)
Oman	0/5 (ii)	0/5 (jj)	10
Pakistan	10/15 (g)	0/10 (gg)	15
Poland	10/15 (a)	0/10 (bb)	0
Qatar	5	0/5 (v)	5
Romania	10	0/10 (v)	15
Russian Federation	15	0/10 (v)	10
Saudi Arabia	5	5	10
Slovak Republic	10/15 (g)	0/10 (v)	5/10 (i)
Slovenia	5	0/5 (pp)	5
South Africa	5/15 (e)	0/5/10 (l)	5/10 (m)
Spain (q)	18	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	18
Tajikistan	15	0/10 (bb)	15
Thailand	10	0/10 (qq)	15
Turkey	10/15 (g)	0/10 (h)	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)	12	0	0
Uzbekistan	15	0/10 (v)	15
Venezuela	5/15 (e)	0/5 (kk)	5/10 (ll)
Vietnam	15	0/10 (v)	15
Yugoslavia	5/15 (e)	8	10
Nontreaty countries	12	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) The 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 the 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 at least 25% of the capital of the payer company. The 15% rate applies in all other cases (however, for the Netherlands, also see footnote [w]).
- (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 Eximbank of Turkey for loans used to purchase industrial, commercial, trading, medical or scientific equipment
  - 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
  - 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
  - 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
  - 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, commercial or scientific equipment or if the recipient of the interest income is the government or central bank. The 10% rate applies in all other cases.
- (q) Belarus honors the double tax treaty entered into by the former USSR and this country. The table lists the tax rates under the 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 0% rate applies if the recipient of the interest income is the government or central bank. 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.
- (u) The 0% rate applies if any of the following conditions is satisfied:
- The loan is approved by the government, or the recipient or payer of the interest is the government or central bank.
  - The loan is provided, guaranteed or insured by the government or central bank.
  - The loan is provided for the acquisition of industrial, commercial, trading, medical or scientific equipment.
- The 5% rate applies in all other cases.
- (v) The 0% rate applies if the recipient of the interest income is the government or central bank. The higher rate applies in all other cases.
- (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.
  - The recipient owns more than 25% of the capital of the payer company and its 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 the 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. The 5% rate applies in all other cases.
- (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 from service supply contracts.
  - The loan relates to industrial, medical or scientific equipment or service 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 is satisfied:
- The loan is approved by the government.
  - The interest income is derived from sales on credit of industrial, medical or scientific equipment.
  - 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.
- (cc) The 5% rate applies to amounts paid for copyrights of works of literature, art or science, except motion pictures, or for the right to use industrial, commercial or scientific equipment or means of transportation. The 10% rate applies in all other cases.
- (dd) The 5% rate applies if the recipient owns more than 20% of the capital of the payer company and contributes at least €81,806.70 to the share capital of the payer. The 15% rate applies in all other cases.
- (ee) The 0% rate applies to the following interest payments:
- Interest arising in Belarus and paid to the government of Germany, Deutsche Bundesbank, Kreditanstalt für Wiederaufbau or Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern
  - Interest paid with respect to a loan guaranteed by the Hermes-Deckung if the recipient of the interest income is the government or central bank of Belarus
- The 5% rate applies in all other cases.
- (ff) The 3% 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 expertise
- The 5% rate applies to amounts paid for the use of, or the right to use, copyrights of literary and artistic works, including motion pictures and films or tapes used for television or radio broadcasting or for the use of, or right of use, all types of equipment and transportation.
- (gg) The 0% rate applies if any of the following conditions is satisfied:
- The loan is approved by the government.
  - The recipient of the interest income is the government or central bank.
  - The interest paid on the loan or credit is guaranteed or secured by the government (including the Österreichische Kontrollbank Aktiengesellschaft).

- The 5% rate applies in all other cases.
- (hh) The 0% rate applies if the recipient of the interest income is the government, the central bank, the Finnish Fund for Industrial Cooperation (FINNFUND) or Finnish Export Credit (FINNVERA). The 5% rate applies in all other cases.
- (ii) The 0% rate applies if the recipient of the dividends is the government, central bank or the Governmental General Reserve Fund of Oman. The 5% rate applies in all other cases.
- (jj) The 0% rate applies if the recipient of the interest income is the government, central bank or the Governmental General Reserve Fund of Oman. The 5% rate applies in all other cases.
- (kk) The 0% rate applies if any of the following conditions is satisfied:
- The recipient of the interest income is the government or a government authority.
  - The interest is paid on loans guaranteed by the government.
  - The interest is paid on loans aimed at promoting exports or connected to the supply of all types of equipment and transport vehicles by an enterprise of the other contracting state.
  - The interest is paid with respect to sales of all types of equipment and transport vehicles.
- The 5% rate applies in all other cases.
- (ll) The 5% rate applies if the royalties are paid for the use of, or the right to use, the following:
- Scientific copyrights, software or trademarks
  - All types of equipment and transport vehicles
- The 10% rate applies in all other cases.
- (mm) The 0% rate applies if any of the following conditions is satisfied:
- The interest is paid by the government or a government authority.
  - The interest is paid to the government or a government authority, local agency or body (including a financial institution) that fully belongs to the state or governmental body.
  - The interest is paid to any other agency or body (including a financial institution) on loans provided with respect to the application of an agreement entered into between the contracting states.
- The 8% rate applies in all other cases.
- (nn) The 0% rate applies if the loan is provided to the government or central bank. The 10% rate applies in all other cases.
- (oo) The 0% rate applies if the recipient of the dividends is one of the following:
- National Treasury Management Agency of Ireland
  - National Reserve Pension Fund of Ireland
  - Any other organization, including an agency or institution, that is fully or mainly owned by the government
- The 5% rate applies if the recipient owns at least 25% of the capital of the payer company. The 10% rate applies in all other cases.
- (pp) The 0% rate applies if the recipient or payer of the interest income is the government, a local authority or central bank. The 5% rate applies in all other cases.
- (qq) The 0% rate applies if the recipient of the interest income is the government, central bank or an institution with capital that is fully owned by the government or local authorities.
- (rr) The 5% rate applies if the recipient owns at least 25% of the capital of the payer company. The 10% rate applies in all other cases.
- (ss) The 0% rate applies if the recipient of the interest income is the government, central bank, other government agency or a financial institution. The 10% rate applies in all other cases.

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## Belgium

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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	10/21/25 (d)(e)
Interest	15/21 (e)
Royalties from Patents, Know-how, etc.	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (f)

- (a) See Section B.  
 (b) In addition, a 3% surtax (crisis contribution) is imposed.  
 (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) The 21% withholding tax rate is introduced, effective from 1 January 2012. For individuals, the 15% rate remains applicable for traditional saving accounts. Also for individuals, an additional 4% will be due if total movable income (dividends and interests) exceeds €20,020. Please contact your tax advisor for further details.  
 (f) 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 are subject to tax on their Belgian-source income only. A company is resident in Belgium if its central management or registered address is located in Belgium.

**Rates of corporate income tax.** The normal corporate income tax rate is 33% for both resident companies and branches. Income below €322,500 is taxed at rates ranging from 24.25% to 34.5%. The reduced rates apply only if the company pays annual remuneration of at least €36,000 to at least one director or partner. The reduced rates also do not apply to a company if any of the following circumstances exist:

- The company is a holding company.
- 50% or more of the company is owned by another company.
- The company makes a dividend distribution exceeding 13% of the paid-in capital.

In addition to the applicable rates, a 3% surtax (crisis contribution) is levied. Tax holidays are available in certain circumstances.

**Special corporate tax regimes.** In the past, special favorable corporate tax regimes were available for coordination centers, service centers and distribution centers. These regimes were phased

out by December 2010. Rulings for service centers, distribution centers and finance centers may be obtained through advance pricing agreements. 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 in Belgium may benefit from 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, as reported in the nonconsolidated closing balance sheet of the financial year preceding the tax year (upward or downward adjustments of the risk capital are taken into account on a pro rata basis), excluding, among others, 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)
- 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 — *linéaire obligatie*, or OLO) for the preceding year. The average OLO-rate in 2010 (and accordingly the notional interest deduction rate for the 2012 tax year [see *Administration* for a description of the tax year]) was 3.425%. Effective from the 2013 tax year the notional interest deduction rate will be 3% (3.5% for small and medium-sized enterprises). In addition, under proposed legislation, the deduction may not be carried forward in the event of a loss. Until 2011, the deduction could be carried forward for up to seven years.

**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 conditions must be fulfilled:

- 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.** The net amount of capital gains on shares is exempt from tax if dividends on such shares qualify for the participation exemption (see *Dividends*). It is likely that a minimum holding period of one year will apply as of 2012. If this last condition is not met, a 25% tax rate will apply. A minimum share ownership is not required.

All other capital gains are taxed at the ordinary rate. If the proceeds are reinvested in 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 depreciation period of the newly acquired assets.

**Administration.** A tax year refers to the year following the financial year if the financial year ends on 31 December. If the financial year ends before 31 December, then the tax year refers to the year in which the financial year closes. Consequently, the 2011 tax year relates to a financial year ending between (including) 31 December 2010 and (including) 30 December 2011.

To avoid a surcharge, tax must be paid in advance in quarterly installments. For a calendar-year taxpayer, the quarterly installments are due in 2011 on 11 April, 11 July, 10 October and 20 December. For the 2012 tax year, the percentage of the surcharge was 2.25% (which is a historically low percentage).

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

**Advance rulings.** An advance decision in tax matters (tax ruling) is a unilateral written decision by the Belgian tax authorities at the request of a (potential) taxpayer about the application of the fiscal law in a specific situation that has not yet occurred, as described by the taxpayer. The purpose of such a ruling is to provide upfront certainty to the taxpayer.

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 five years.

However, advance rulings are not issued in certain circumstances such as the following:

- Transactions that have already been implemented or that are in a tax litigation phase
- Transactions that lack economic substance in Belgium

- 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.

In principle, the advance rulings are published.

**Dividends.** Under the dividend 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 a participation with an investment value of at least €2,500,000.
- The shares must be held for at least one year and must be accounted for as financial fixed assets.

The minimum participation thresholds and the one-year holding period requirement do not apply to dividends received by qualifying investment companies.

In the case of insufficient profits, the excess participation exemption can be carried forward indefinitely to the extent that it relates to qualifying dividends (that is, dividends from companies established in the European Economic Area and dividends that satisfy conditions in a country with which Belgium has entered into a double tax treaty). Nonqualifying dividends (for example, dividends from a company established in a nontreaty country) can give rise to the participation exemption, but in the case of insufficient profits, the excess participation exemption cannot be carried forward.

Specific exclusion rules are applicable under the taxation test. However, certain of these exclusion rules contain exceptions or transparency rules.

The normal statutory withholding tax rates for dividends paid by Belgian companies are 21% and 25%.

Exemptions or reduced rates are available under Belgium's tax treaties or domestic legislation. For example, withholding tax is not imposed on dividends distributed to a qualified treaty parent. This is a company that holds or commits itself to hold a shareholding of at least 10% in a Belgian company for an uninterrupted period of 12 months.

A 10% withholding tax is imposed in the event of a liquidation of a company or a redemption of a company's own shares.

**Foreign tax relief.** Income derived from a permanent establishment abroad may be exempt under the provisions of a tax treaty. A Belgian company that receives foreign-source interest income and royalties subject to a foreign withholding tax can claim a foreign tax credit in Belgium if certain conditions are satisfied. The maximum foreign tax credit that may be claimed equals <sup>15</sup>/<sub>85</sub> of the net income at the border.

### C. Determination of trading income

**General.** Taxable income is based on income reported in the annual financial statements and includes all gains, profits, costs, dividends, interest, royalties and other types of income.

Certain business expenses are not deductible for tax purposes, such as certain car expenses, certain 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. However, the inclusion of indirect production costs 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 allowed.

**Provisions.** Provisions are tax deductible only if they are accounted for and if they relate to specific charges that are probable taking into account events occurring during the applicable financial year.

**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 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% investment deduction is available for investments during the 2012 tax year in environmentally friendly R&D, energy savings and related patents by resident and nonresident companies. A company can opt for a spread investment deduction of 20.5% and accordingly deduct each year 20.5% of the annual amortization. For security-related investments made by qualifying small companies, 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 investment deduction. As opposed to the investment deduction, this tax credit is effectively paid out if a company has insufficient taxable income for four consecutive tax years.

Tax incentives exist for investment in Belgian audiovisual works (see Section B) and for the shipping industry.

**Patent box.** Effective from the 2008 tax year, resident and non-resident companies can benefit from the “patent income deduction.” This incentive provides a tax deduction equal to 80% of the gross 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
- 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
- Amortization claimed with respect to 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 deduction for patent income 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.** In general, companies may carry forward tax losses without limitations. However, certain limitations may apply in cases of restructurings and changes of control.

Tax losses cannot be carried back.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
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 antiavoidance provisions that relate to specific aspects of transfer pricing. "Abnormal and gratuitous advantages" granted by a Belgian enterprise are added to the tax base of the Belgian enterprise, unless the advantages are directly or indirectly part of the taxable income of the recipient in Belgium. 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.

#### 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 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 [k]).

In reaction to the OECD's position regarding the application of Article 26 (exchange of information) of the model convention in treaties entered into by Belgium, Belgium began renegotiating all treaties in 2009. This has resulted in more than 40 new treaties (none of which have become effective). It is expected that most of these treaties will enter into effect in the upcoming years. In some cases the negotiations are limited to the exchange of information only. For certain treaties, other articles are also included in the negotiations.

	<b>Dividends (a)(k)</b>	<b>Interest (b)</b>	<b>Royalties (c)</b>
	%	%	%
Albania	5/15 (m)	5	5
Algeria	15	15 (i)	15 (e)(i)(j)
Argentina	10/15 (m)	12	15 (i)
Armenia	5/15 (m)	10 (i)	8
Australia (l)	15	10	10
Austria (l)	0/15 (f)	15	0 (g)
Azerbaijan	5/10/15 (m)	10	10 (e)
Bangladesh	15	15	10
Belarus	5/15 (m)	10	5
Brazil	10/15 (m)	10/15 (i)	15 (i)
Bulgaria	10	10 (i)	5
Canada (l)	5/15 (m)	10	10 (i)
Chile	0/15 (m)	5/15	5/10
China (l)	10	10	10
Côte d'Ivoire	15	16	10
Croatia	5/15 (m)	10 (i)	0
Cyprus	0/10/15 (f)(m)	10 (i)	0
Czech Republic (l)	0/5/15 (f)(m)	10 (i)	0 (n)
Denmark (l)	0/15 (f)(m)	10	0
Ecuador	15	10 (i)	10
Egypt	15/20 (m)	15	15 (i)
Estonia	0/5/15 (f)(m)	10	10 (i)
Finland (l)	0/5/15 (f)(m)	10 (i)	5 (i)
France (l)	0/10/15 (f)(m)	15	0
Gabon	15	15 (i)	10
Georgia	5/15 (m)	10 (i)	10 (i)
Germany (l)	0/15 (f)	0/15 (i)	0
Ghana	5/15 (m)	10 (i)	10 (i)
Greece (l)	0/5/15 (f)(m)	10 (i)	5
Hong Kong SAR	0/5/15 (m)	10 (i)	5
Hungary	0/10 (f)	15 (i)	0
Iceland (l)	5/15 (m)	10 (i)	0
India	15	10/15 (i)	10
Indonesia	10/15 (m)	10	10
Ireland	0/15 (f)	15	0
Israel	15	15	10 (e)
Italy (l)	0/15 (f)	15	5
Japan (l)	5/15 (m)	10	10
Kazakhstan	5/15 (m)	10	10
Korea (South) (l)	15	10	10
Kuwait	0/10 (i)	0	10
Latvia	0/5/15 (f)(m)	10 (i)	10 (i)

	<b>Dividends (a)(k)</b>	<b>Interest (b)</b>	<b>Royalties (c)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Lithuania	0/5/15 (f)(m)	10 (i)	10 (i)
Luxembourg (l)	0/10/15 (f)(m)	15 (p)	0
Malaysia (l)	15	10 (i)	10 (h)
Malta (l)	0/15 (f)	10	10 (h)
Mauritius	5/10 (m)	10 (i)	0
Mexico	5/15 (m)	15 (k)	10
Mongolia	5/15 (m)	10 (i)	5 (i)
Morocco	6.5/10 (m)	10 (i)	10
Netherlands (l)	0/5/15 (f)(m)	10 (i)	0
New Zealand (l)	15	10	10
Nigeria	12.5/15 (m)	12.5	12.5
Norway (l)	5/15 (m)	15 (i)	0
Pakistan	15	15	15 (j)
Philippines	10/15 (m)	10	15
Poland	0/5/15 (f)(m)	5 (i)	5 (i)
Portugal	0/15 (f)	15	10
Romania	0/5/15 (m)	10	5
Russian Federation (l)	10	10 (i)	0
Rwanda (l)	0/15 (m)	0 (i)	10 (i)
San Marino (l)	0/5/15 (m)	10 (i)	5
Senegal	15	15	10
Singapore (l)	5/15 (m)	5 (i)	5 (i)
Slovak Republic	0/5/15 (f)(m)	10 (i)	5 (i)
Slovenia	0/5/15 (f)(m)	10	5
South Africa	5/15 (m)	10 (i)	0
Spain (l)	0/15 (f)(m)	10 (i)	5
Sri Lanka	15	10	10
Sweden	0/5/15 (f)(m)	10 (i)	0
Switzerland	0/10/15 (m)(r)	10 (i)	0
Taiwan	10	10	10
Thailand	15/20 (m)	10/21 (i)	15 (j)
Tunisia	5/15 (m)	10 (i)	11
Turkey	5/20 (i)	15	10
Ukraine	5/15 (m)	10 (i)	10 (i)
USSR (o)	15	15	0
United Arab Emirates	5/10 (m)	5	5 (i)
United Kingdom (l)	0/5/10 (f)(m)	15	0
United States	0/5/15 (m)	0 (i)	0
Uzbekistan	5/15 (m)	10 (i)	5
Venezuela	5/15 (m)	10 (i)	5
Vietnam	5/10/15 (m)	10	15 (i)
Yugoslavia (d)	10/15 (m)	15	10
Nontreaty countries	10/21/25 (q)	21	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 Bosnia-Herzegovina, Macedonia, Montenegro and Serbia.
- (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 10% 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 applies to copyright royalties.
- (i) Please consult the treaty for further details.
- (j) A 0% rate (Algeria and Thailand, 5%) applies to copyright royalties other than for motion pictures.
- (k) 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 (10% participation for at least one year and qualifying company), the treaty must contain an extended exchange-of-information clause.
- (l) Belgium has signed new double tax treaties, additional treaties or protocols with Australia, Austria, Bahrain, China, Congo (Democratic Republic of), the Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, the Isle of Man, Italy, Japan, Korea (South), Luxembourg, Macau SAR, Macedonia, Malaysia, Malta, Moldova, Monaco, the Netherlands, New Zealand, Norway, Oman, Qatar, Rwanda, San Marino, Seychelles, Singapore, Spain, Tajikistan, Uganda and the United Kingdom, but the new treaties and protocols have not yet become effective. Negotiations for treaties with Canada and the Russian Federation have been concluded, but these treaties have not yet been signed.
- (m) The following lower rates apply to dividends paid by Belgian subsidiaries if the recipient holds the indicated level of participation.

	Lower rate %	Level of participation
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	10	10% and US\$75,000 (1)
Belarus	5	25%
Brazil	10	10%
Canada	5	10%
Chile	0	10%
Croatia	5	10%
Cyprus	10	25%
Czech Republic	5	25%
Denmark	0	25%
Egypt	15	25%
Estonia	5	25%
Finland	5	25%
France	10	10%
Georgia	5	25%
Ghana	5	10%
Greece	5	25%
Hong Kong SAR	5	10%
Hong Kong SAR	0	25%
Iceland	5	10% (2)

	Lower rate %	Level of participation
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%
Morocco	6.5	25%
Netherlands	5	10%
Nigeria	12.5	10%
Norway	5	25%
Philippines	10	10%
Poland	5	25% (3)
Poland	5	10% and €500,000 (3)
Romania	5	25%
Rwanda	0	25%
San Marino	5	10%
San Marino	0	25%
Singapore	5	10%
Singapore	0	25% (4)
Slovak Republic	5	25%
Slovenia	5	25%
South Africa	5	25%
Spain	0	25%
Sweden	5	25%
Switzerland	10	25%
Thailand	15	25%
Tunisia	5	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) Dividends may qualify for the 5% rate if the recipient holds either of the listed levels of participation.
- (4) The 0% rate applies if the beneficial owner of the dividends is a company that has owned directly shares representing at least 25% of the capital of the payer of the dividends for a 12-month period ending on the date on which the dividend is paid.
- (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 of 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 Kyrgyzstan, Moldova, Tajikistan and Turkmenistan.
- (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.

Belgium has signed new double tax treaties, additional treaties or protocols with Australia, Austria, Bahrain, China, Congo (Democratic Republic of), the Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, the Isle of Man, Italy, Japan, Korea (South), Luxembourg, Macau, Macedonia, Malaysia, Malta, Moldova, Monaco, the Netherlands, New Zealand, Norway, Oman, Qatar, Rwanda, San Marino, Seychelles, Singapore, Spain, Tajikistan, Uganda and the United Kingdom, but these treaties and protocols have not yet taken effect. Negotiations for treaties with Canada and the Russian Federation have been concluded, but these treaties have not yet been signed.

## Bermuda

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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, withholding or capital gains taxes.

### C. Fees and payroll taxes

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

Capital of company		Annual fee BMD
Exceeding BMD	Not exceeding BMD	
0	12,000	1,995
12,000	120,000	4,070
120,000	1,200,000	6,275
1,200,000	12,000,000	8,360
12,000,000	100,000,000	10,455
100,000,000	500,000,000	18,670
500,000,000	–	31,120

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 (BMD)
Permit company whose principal business is Finance, insurance or operation of an open-end mutual fund	4,125
Any other business	1,995
Exempt company parent of a wholly owned exempted company carrying on insurance business	1,995
Unit trust management company	2,905

**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 5.75% of employee remuneration to pay the payroll tax.

The following are the payroll tax rates, effective from 1 April 2011:

- A 14% rate applies to taxpayers with an annual payroll of greater than BMD 1 million and to exempt undertakings.
- A 12.75% rate applies to taxpayers with an annual payroll of greater than BMD 500,000 and up to BMD 1 million.
- A 10.75% rate applies to taxpayers with an annual payroll of at least BMD 200,000 and up to BMD 500,000.
- A 9.75% rate applies to taxpayers operating a hotel or restaurant with an annual payroll of BMD 200,000 or greater.
- A 7.75% rate applies to remuneration paid to employees in special situations. These are persons on jury duty or on duty with the Bermuda Regiment or Bermuda Volunteer Reserve, and hotel employees in November, December, January, February or March.
- A 7.25% rate applies generally to employers with an annual payroll of less than BMD 200,000, self-employed persons carrying on business as taxi drivers, fishermen, farmers or horticulturists, the Bermuda Hospitals Board, the Corporation of Hamilton and educational, sporting or scientific institutions, associations or societies that, in the Minister of Finance's opinion, are operated for purposes other than for the purpose of gain by the entity's individual members.
- A 5.25% rate applies to the government and various government agencies, registered charities, religious and cultural organizations, the Bermuda Festival Ltd. and employers who establish a business that is located in an Economic Empowerment Zone (designated under Section 2A of the Economic Development Act 1968) and that are registered by the Bermuda Small Business Development Corporation under Section 4(1)(c) of the Bermuda Small Business Development Corporation Act 1980. However, such employers may not be chargeable to tax at the 5.25% rate for a period exceeding nine tax periods beginning in and including the tax period in which the business is established.

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 BMD 750,000 per employee. However,

taxpayers paying at the rates of 9.75%, 10.75%, 12.75% or 14% are allowed a quarterly reduction in remuneration of BMD 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 BMD 269. The government filing fee is BMD 80.

## 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 are required to have at least 60% of their issued share capital beneficially owned and controlled by Bermudians. Because this type of company is usually formed for the benefit of residents of Bermuda, the local companies may transact business worldwide or in Bermuda only.

*Exempted companies.* An exempted company is the most common form used by international businesses to transact business from Bermuda. Exempted companies are exempted from the requirement imposed on local companies that at least 60% of the equity be owned and controlled by Bermudians, as provided for by the Companies Act of 1981. In general, exempted companies may not compete with local companies in the Bermuda market nor own real estate in Bermuda. However, they may carry on business outside Bermuda or with other exempted undertakings in Bermuda. Examples of exempted companies include investment holding companies, trading companies, mutual fund companies, insurance companies and foreign sales corporations.

*Permit companies.* Permit companies are companies 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.

*Exempted Undertakings Tax Protection Act, 1966.* Under the Exempted Undertakings Tax Protection Act, 1966, as amended, all exempted undertakings in Bermuda, such as exempted and permit companies, partnerships and unit trusts, may apply for an undertaking by the government that taxation introduced in Bermuda will not apply to the exempted company until 28 March 2016. Under a recent amendment to this act, the assurance of tax-neutrality is extended from 28 March 2016 until 31 March 2035 if proper application is made with the Registrar of Companies and if a fee of BMD 165 is paid.

**Foreign-exchange controls.** Exempted companies and permit companies are designated as nonresident for exchange control purposes. The nonresident designation allows these entities to operate free of exchange control regulations and enables them, without reference to the Bermuda Monetary Authority, to make payments

of dividends, distribute capital, open and maintain foreign bank accounts, maintain bank accounts in any currency and purchase securities. However, the issuance and transfer of shares and the change of beneficial ownership of shares in a Bermuda exempted company must be approved by the Bermuda Monetary Authority. The remittance and repatriation of funds by exempted companies and permit companies are not subject to exchange controls. Similarly, trust settlements on behalf of nonresidents are generally free from exchange controls. Under the Exchange Control Act 1972 and the Exchange Control Regulations 1973, certain exchange controls apply to Bermuda residents and to local companies. No capital or exchange control regulations apply to nonresidents.

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

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.

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## Bolivia

(Country code 591)

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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	3/4/5 (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) A Bolivian-source loss incurred in a year may be carried forward to offset taxable income derived in the following three years. Loss carryforwards are not subject to inflation adjustment. For new projects with a minimum capital investment of Bs 1 million, loss carryforwards may offset taxable income derived in the five years from the date of beginning operations. 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 income tax (IUE) on their Bolivian-source income.

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

*Mining operations.* Law No. 3787, dated 24 November 2007, which amended Law No. 1777 of the Mining Code, introduced an additional 12.5% rate of IUE on additional taxable profits resulting from favorable price conditions for minerals and metals.

The following are significant aspects of Law No. 3787:

- The 12.5% tax rate applies if mineral and metal quotations are equal or higher than the base quotations established by law.
- The 12.5% tax does not apply to taxable profits attributable to sales that have lower quotations than the base quotations.
- To encourage transformation of raw material in Bolivia, companies producing metal or nonmetal minerals with added value pay only 60% of the additional IUE tax rate.

The tax referred to above must be paid on a monthly basis. The date of payment depends on the last digit of the Tax Identification Number. The monthly payments are considered advance payments of the tax determined at the end of the year. If the total of the advance payments is less than the amount determined at the end of the year, this difference must be paid. If the total of the advance payments exceeds the amount determined at the end of the year, the difference can be claimed as a tax credit against the standard corporate income tax for the year or the additional amount of corporate income tax for the following year.

*Surtax.* A 25% surtax is imposed on net income derived from mining, 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 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 mineral-producing companies, the net income for an extraction operation is the value of the commercialized product in the mining market.

*Hydrocarbon Direct Tax.* The Hydrocarbon Direct Tax is imposed at a rate of 32% on hydrocarbon production in oil wells located in Bolivia. 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
- 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 exempt from tax.

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

Business	Tax year-end
Industry (including oil and gas)	31 March
Agriculture and agribusiness	30 June
Mining	30 September
All other businesses	31 December

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 *Rates of corporate tax*).

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 tax authorities 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 paid, remitted or credited. 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*).

**Dividends.** The 12.5% withholding tax on payments to foreign beneficiaries applies to dividends paid by Bolivian companies (see *Withholding taxes*). 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 taxable income

**General.** Taxable income is the income reported in the companies' financial statements prepared in accordance with generally accepted accounting principles in Bolivia, 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

Royalties paid with respect to mining activities are creditable or deductible, depending on the price of the minerals and subject to certain limits established by law.

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

*Documentation for deduction of expenses.* To deduct expenses in an amount of Bs 50,000 or greater, the taxpayer must have payment supports issued by a financial intermediation entity regulated by the Authority of Supervision of the Financial System (Autoridad de Supervisión del Sistema Financiero, or ASFI). These documents must have the following information:

- Financial institution (issuer) business name
- Transaction or operation number
- Transaction date
- Transaction amount

Taxpayers must provide to the tax authorities the payment supports of transactions on a monthly basis.

**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 the following:

- Technical reserves in insurance companies
- Severance provisions
- Bad debt provisions
- Provisions for environmental restoration

To claim deductions, certain conditions must be satisfied.

**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 in five years 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.** A Bolivian-source loss incurred in a year may be carried forward to offset taxable income derived in the following three years. Loss carryforwards are not subject to inflation adjustment. For new projects with a minimum capital investment of Bs 1 million, loss carryforwards may offset taxable income derived in the five years from the date of beginning operations. The carryforward period is four years for merging companies.

## **D. Other significant taxes**

The following table summarizes other significant taxes.

Nature of tax	Rate
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%
Transactions Tax, on gross revenue; corporate income tax (IUE) 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 (2011 rates)	
Beer	Bs 2.60 per liter plus 1%
Wine	Bs 2.40 per liter plus 5%
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 (2011 rates)	
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
Mining royalty; 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 24 July 2009 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;	

Nature of tax	Rate
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%
Housing fund; on monthly gross revenue per employee	2%
Professional risk insurance; on monthly gross revenue per employee	1.71%
Solidarity Fund	3%
Solidarity Fund for mining entities	2%
Employees	
Retirement fund	10%
Common risk insurance	1.71%
Solidarity Fund (fixed contribution)	0.5%
Solidarity Fund (variable and cumulative contribution)	
Difference between the total salary and Bs 35,000	10%
Difference between the total salary and Bs 25,000	5%
Difference between the total salary and Bs 13,000	1%
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 6.96 = US\$1.

**Transfer pricing.** 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.

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.

Bolivian law does not contain specific transfer-pricing rules.

**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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## Bonaire, Sint Eustatius and Saba (BES-Islands; extraordinary overseas municipalities of the Netherlands)

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*On 10 October 2010, the country Netherlands Antilles, which consisted of five island territories in the Caribbean Sea (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), was dissolved. On dissolution of the Netherlands Antilles, the islands of Bonaire, Sint Eustatius and Saba (BES-Islands) became part of the Netherlands as extraordinary overseas municipalities. Curaçao and Sint Maarten have both become autonomous countries within the Kingdom of the Netherlands. A new tax regime applies to the BES-Islands, effective from 1 January 2011. The following chapter provides information on taxation in the BES-Islands only. Chapters on Curaçao and Sint Maarten appear on pages 271 and 1050, respectively.*

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## A. At a glance

Profit Tax	– (a)
Capital Gains Tax	– (a)
Real Estate Tax Rate (%)	25 (b)(c)
Yield Tax Rate (%)	5 (c)

- (a) The BES-Islands does not have a profit tax or capital gains tax.
- (b) The effective annual taxation is 1% of the fair value of real estate located in the BES-Islands.
- (c) These taxes apply if the entity is deemed to be resident in the BES-Islands. If the entity is deemed resident in the Netherlands, the Dutch corporate income tax and the Dutch dividend withholding tax instead apply. For further details, see Section B.

## **B. Taxes on corporate income and gains**

**New BES tax regime.** Effective from 1 January 2011, a new tax regime applies in the BES-Islands. This tax regime does not include a profit tax. A yield tax and a real estate tax have been introduced in the BES-Islands to replace the profit tax.

**Residency fiction.** The yield tax and real estate tax mentioned above are not automatically applicable as a result of a residency fiction. Under the new tax regime, in principle, all entities established on the BES-Islands are deemed to be established in the Netherlands for tax purposes and accordingly subject to Dutch corporate income tax (up to 25%) and Dutch dividend withholding tax (in principle, 15%). For details on the Dutch taxes, see the chapter on the Netherlands, page 814.

However, on request, entities that have sufficient nexus with the BES-Islands may be subject to the fiscal system of the BES-Islands. In such case, no Dutch corporate income tax applies, but the yield tax and real estate tax apply. Entities are deemed to have sufficient nexus with the BES-Islands if any of the following circumstances exist:

- The entity is a foundation or trust that is a resident of the BES-Islands.
- The entity has been admitted to a special trade and service depot.
- On request, the entity has obtained a ruling from the tax authorities that, for tax purposes, the entity is deemed to be a resident of the BES-Islands. A request for such a ruling must be made with the tax authorities within six months after the beginning of the calendar year.

The ruling referred to above is issued in the following cases:

- The assets of the entity in the BES-Islands consist of less than 50% of mobile assets, including, among other investments, participations and cash.
- The entity does not meet the criteria above but employs at least three residents of the BES-Islands that manage the entity's assets, and the entity has at its disposal business premises on the BES-Islands with a value of at least US\$50,000.
- The entity is a holding company that holds at least 95% of the shares in a participation that already has obtained such a ruling.
- The entity has a small business with a turnover of no more than US\$80,000, the assets of the company in general do not exceed US\$200,000, and the company does not carry out financial services, insurance or trust (fiduciary) activities.

**Yield tax.** The yield tax is levied on distributions (in whatever form) of profits by entities resident in the BES-Islands. The rate of the yield tax is 5%. The entity making the distribution acts as withholding agent. Interest and royalties payments are not subject to the yield tax.

**Real estate tax.** The real estate tax is levied on gains derived from real estate located in the BES-Islands. The real estate tax is levied on a taxpayer (person or entity) that, at the beginning of the year, has the use of real estate by virtue of ownership, possession or a limited right.

The profit is fixed at 4% of the fair market value of the real estate. The rate of the real estate tax is 25% of the fixed profit. Consequently, the effective annual tax rate is 1% of the fair market value of the real estate. The value of the real estate is determined by the Tax Inspector. The value is set at the beginning of the period for which the value is determined and is in principle determined for five consecutive calendar years.

Real estate tax is not levied on owner-occupied homes, real estate included in the business assets of a privately run enterprise (that is not operating in the form of an entity) and second homes with a value of less than US\$50,000. In addition, entities that are deemed to be residents of the Netherlands are exempt from real estate tax.

### Administration

*Real estate tax.* The real estate tax is levied over a period of one calendar year. The Tax Inspector imposes a tax assessment, and the filing of a tax return is not required.

*Yield tax.* The withholding agent must withhold the yield tax at the time the profit distribution is made disposable and must pay the yield tax at the time of filing of a quarterly tax return. No tax return needs to be filed for periods in which no distributions take place.

## C. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
General expenditure tax; levied on the delivery of manufactured goods in the BES-Islands by a manufacturer as part of its business, on the rendering of services in the BES-Islands by an entrepreneur as part of its business and on imports of goods	
Bonaire	
Delivery of goods	8
Other taxable activities	6
St. Eustatius and Saba	
Delivery of goods	6
Other taxable activities	4
Real estate transfer tax	5

## D. Tax treaties

The Dutch treaty network does not apply to entities deemed to be residents of the BES-Islands. However, the Dutch standard treaty does not exclude entities deemed to be residents of the Netherlands (by the residency fiction) from the application of the treaty.

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## A. At a glance

Corporate Income Tax Rate (%)	22 (a)
Capital Gains Tax Rate (%)	22 (b)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	7.5
Interest	15
Royalties	15
Management and Technical Fees	15
Payments under Construction Contracts	3 (c)
Brokerage Commission	10 (d)
Rent paid for use of buildings and land	5 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0 (e)
Carryforward	5

(a) For approved manufacturing companies, the rate is 15%.

(b) See Section B.

(c) 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.

(d) 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 22%. Approved manufacturing companies are subject to tax at a reduced tax rate of 15%.

The tax rate for a branch is 30%. The reduced 15% 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 a 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 22% 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 held for at least one year that are listed on the Botswana Stock Exchange are exempt from capital gains tax if the seller holds no 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 22%.

**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 (compounded).

**Dividends.** A withholding tax of 7.5% is imposed on dividends paid to residents and nonresidents. It is a final tax.

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*
Commercial buildings	2.5
Office equipment	10
Motor vehicles	25
Plant and machinery	15 to 25

\* An initial allowance of 25% is also granted.

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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax, on almost all supplies of goods and services consumed in Botswana	12
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

No foreign-exchange controls are imposed in Botswana. However, certain forms must be completed for statistical purposes.

**F. Treaty withholding tax rates**

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>	<b>Management and technical fees</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Barbados	5/7.5 (e)	10	10	10 (f)
France	5/7.5 (a)	10	10	7.5
India	10 (c)	10	10	10
Mauritius	5/7.5 (b)	12	12.5	15
Namibia	10 (c)	10	10	15
Seychelles	5/7.5 (g)	7.5	10	10
South Africa	10 (c)	10	10	10
Sweden	7.5 (d)	15 (d)	15 (d)	15
United Kingdom	5/7.5 (h)	10	10	7.5
Zimbabwe	5/7.5 (g)	10	10	10
Nontreaty countries	7.5	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 domestic rate of 7.5% applies because the treaty rate of 10% is higher than the domestic rate.
- (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 7.5% 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 7.5% 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 7.5% rate applies in all other cases.

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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) The withholding tax is imposed 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*).

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

### 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\$130,000).

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

*Social Contribution Tax.* SCT is levied at a general rate of 9%. For financial institutions, private insurance companies and capitalization companies, the SCT rate is 15%.

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. In general, companies must file returns in an electronic format by the last working day of June of the following year. Extensions to file returns are generally not available.

Discussions have recently taken place regarding the reduction of tax filings by combining or eliminating some of them, in view of the redundancy of the filings in an electronic audit environment.

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\$10,800).

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 generally 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 Liquidação e Custódia, or SELIC), which is published each month by the government
- 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, among others, 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).

**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%
- 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.

For accounting purposes, companies adopting International Financial Reporting Standards (IFRS) may calculate depreciation at different rates (taking into account IFRS criteria, which can affect, in addition to depreciation rates, inventory and other items). However, for tax purposes, these accounting differences are tax-neutral under the transitional tax regime (see Section E).

**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 for intrastate transactions	17/19
General rate for interstate transactions	12
Transactions in which taxpayers located in the South or Southeast (except for Espírito Santo State) regions that remit goods and services taxable under ICMS to taxpayers resident in the states of the North, Northeast or Centre-West regions or Espírito Santo State	7
Exports	Exempt
Federal value-added tax (IPI); the top rate applies to luxury or superfluous goods, such as alcoholic beverages and cigarettes	0 to 330
Tax on Financial Operations (IOF); imposed on credit transactions, foreign-exchange transactions, insurance operations and financial investments	
Loan operations	
Daily rate (maximum annual rate of 1.5%)	0.0041
Additional rate	0.38
Foreign-exchange transactions	0.38 to 6.38
Insurance operations	0.38 to 7.38
Financial investments	Various (capped at 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 and companies that manufacture goods in the Manaus Free Trade Zone, 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 and companies that manufacture goods in the Manaus Free Trade Zone, 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

Nature of tax	Rate (%)
Municipal Service Tax (ISS)	2 to 5
Social security contributions (INSS), on monthly salary; paid by Employer	26.8 to 28.8
Employee; rate varies depending on amount of remuneration (amount of employee contribution may not exceed R\$381.42 [US\$206] a month)	8 to 11
Severance Pay Indemnity Fund (FGTS), on monthly salary	8
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 or a resident in a jurisdiction with a privileged tax regime 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.

**Low-tax jurisdiction and privileged tax regime.** The Brazilian low-tax jurisdiction (LTJ) list (black list) and privileged tax regime

(PTR) list (gray list) were adjusted recently to allow listed jurisdictions to challenge such listings. The Brazilian Internal Revenue Service (IRS) enacted Normative Instruction n. 1.045/10, which allows listed countries and entities to request review (through a formal petition to the IRS) of their listing through a legal representative of the relevant jurisdiction. The request must be based on the relevant country's local tax legislation.

The conclusion of this request review could result in the exclusion of the jurisdiction of such list (suspension status or revoked status). In both cases, the legal effects are no longer in force, effective from the date of the exclusion.

**Thin-capitalization.** Under thin-capitalization rules, interest expense arising from a financial arrangement with a related party is deductible only if the related Brazilian borrower does not exceed a debt-to-net equity ratio of greater than 2:1. In addition, interest expense arising from a financing arrangement executed with a party established in a LTJ or benefiting from a PTR is deductible only if the Brazilian borrower does not have a debt-to-net equity ratio of greater than 0.3:1.

**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.

**Digital bookkeeping.** The Public System of Digital Bookkeeping (Sistema Público de Escrituração Digital, or SPED) is a unified electronic storage of accounting and tax bookkeeping. It is intended to replace bookkeeping prepared on paper and to unify the preparation, storage, and certification requirements of the Board of Trade and of the tax authorities at the municipal, state and federal levels. The date by which companies must adopt the SPED depends on the companies' activities and corporate tax regime.

**International Financial Reporting Standards.** Law 11,638/07 introduced changes to the Brazilian Corporate Law (Law 6,404/76) with respect to the preparation of financial statements for corporations as well as for large companies, regardless of whether they are organized as corporations. This law represents a major step in the process towards harmonization of Brazilian GAAP with IFRS. Under this law, which took effect on 1 January 2008, large companies must prepare their financial statements under new Brazilian GAAP, which is consistent with IFRS principles.

This harmonization process is not intended to generate any tax consequences in Brazil. Consequently, the Brazilian IRS has issued guidance on achieving such tax neutrality (see *Transitional tax regime*).

**Transitional tax regime.** Under the transitional tax regime (RTT), all accounting changes related to the introduction of IFRS in Brazil are neutral for tax purposes if these changes created a different methodology criteria for the recognition of revenue, costs and expenses.

**Special tax benefits.** The Brazilian government has issued laws providing tax incentives to increase investments in Brazil. The main programs are the following:

- Special Tax Regime for Construction, Expansion, Reform and Modernization of Football Stadiums (Regime Especial de Tributação para Construção, Ampliação, Reforma ou Modernização de Estádios de Futebol, or RECOPA): tax benefits related to the Federation Internationale de Football Association (FIFA) World Cup
- Plano Brasil Maior: import, export and sales tax benefits
- Law 12,431/2011: tax benefits for investments in infrastructure and research and development (R&D)

## F. Treaty withholding tax rates

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

	Dividends %	Interest %	Royalties (k) %
Argentina	0	15 (d)	– (n)
Austria	0	15 (d)	15 (b)(l)
Belgium (o)	0	15 (a)(d)	15 (c)(m)
Canada	0	15 (a)(d)	15 (l)
Chile	0	15	15
China	0	15 (d)	15 (l)
Czechoslovakia (h)	0	15 (d)(f)	15 (l)
Denmark	0	15 (d)	15 (l)
Ecuador	0	15 (d)	15 (l)
Finland	0	15 (d)	15 (c)(l)
France	0	15 (a)(d)	15 (c)(l)
Hungary	0	15 (d)(g)	15 (l)
India	0	15 (d)	15 (l)
Israel	0	15 (d)	15 (i)
Italy	0	15 (d)	15 (l)
Japan	0	12.5 (d)	12.5 (e)
Korea (South)	0	15 (a)(d)	10 (l)(o)
Luxembourg	0	15 (a)(d)	15 (l)
Mexico	0	15 (d)	10 (n)
Netherlands	0	15 (a)(d)	15 (l)
Norway	0	15 (d)	15 (l)
Paraguay (j)	0	15 (d)	15
Peru	0	15 (d)	15
Philippines	0	15 (d)	15 (l)
Portugal	0	15 (d)	15
Russian Federation (j)	0	15 (d)	15
South Africa	0	15 (d)	10 (p)
Spain	0	15 (d)(f)	10 (o)(p)
Sweden	0	15 (d)	15 (l)
Ukraine	0	15 (d)	15
Venezuela (j)	0	15 (d)	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 the use of, or the right to use, copyrights of literary, artistic or scientific works, excluding cinematographic films and films or tapes for television or radio broadcasting, produced by a resident of a contracting state.
- (c) The withholding rate is 10% for royalties for the use of, or the right to use, copyrights of literary, artistic or scientific works or for the use of, or the right to use, cinematographic films or television or radio films or tapes produced by a resident of a contracting state.
- (d) Interest paid to the government of the other contracting state, a political subdivision thereof or an agency (including a financial institution) wholly owned by that government or political subdivision is exempt from tax.

- (e) The withholding rate is 15% for royalties with respect to copyrights of cinematographic films and films or tapes for radio or television broadcasting.
- (f) The withholding rate is 10% for interest on certain long-term (at least 10 years) bank loans.
- (g) The withholding rate is 10% for interest on certain long-term (at least eight years) bank loans.
- (h) Brazil is honoring the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (i) This rate applies to royalties related to the use of, or the right to use, trademarks. For other royalties, including payments for technical assistance and technical services, the rate is 10%.
- (j) This treaty has been signed, but it has not yet been ratified.
- (k) The tax treaties do not apply to the CIDE (see footnote [d] to Section A).
- (l) The withholding tax rate is 25% for royalties paid for the use of trademarks.
- (m) The withholding tax rate is 20% for royalties paid for the use of trademarks.
- (n) The treaty does not provide a maximum rate for royalties.
- (o) The withholding rate is 15% for royalties for the use of, or the right to use, trademarks.
- (p) 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

(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 (%)	0

### B. Taxes on corporate income and gains

Companies incorporated under the British Virgin Islands (BVI) Companies Act are exempt from taxes under the BVI Income Tax Ordinance in accordance with the BVI Business Companies Act, 2004 (BVI BC Act), which entered into force on 1 January 2005. The BVI BC 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. Payroll tax

Payroll tax is imposed on every employer and self-employed person who carries on business in the BVI. The tax rates are 10% for Class 1 employers and 14% for Class 2 employers. The tax is applied to the remuneration paid or deemed to be paid, 8% of which may be reclaimed and paid by the employees or deemed employees. Class 1 employers are those meeting the following conditions:

- Payroll during the financial year that does not exceed US\$150,000
- Annual turnover that does not exceed US\$300,000
- A total of seven or less employees and deemed employees

All employers not falling within the Class 1 category are deemed to be Class 2 employers.

The first US\$10,000 of actual remuneration paid to an employee, deemed employee or self-employed person is exempt from tax.

### D. Fees and stamp duties

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

<b>Nature of fees and duties</b>	<b>Rate</b>
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
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%

## E. 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:

- 20%, effective from 1 January 2008
- 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.

## F. Tax treaties

Although the United Kingdom's double tax treaties with Japan and Switzerland have been extended to the BVI, these treaties are not used in practice. The BVI has not entered into any other tax treaties. However, the BVI has entered into tax information exchange agreements with the United States and with 22 European countries including France, Ireland, Italy, the Netherlands and the United Kingdom.

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## Brunei Darussalam

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## A. At a glance

Corporate Income Tax Rate (%)	22 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	22 (a)

Withholding Tax (%) (b)	
Dividends	0
Interest	15 (b)
Royalties	10
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) For a listing of withholding taxes, see Section D.

## 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.

**Rate of corporate income tax.** The income tax rate is 22% for resident and nonresident companies, except for those engaged in petroleum operations. The rate of petroleum income tax is 55%.

The first B\$100,000 of chargeable income is taxed at a reduced rate of one quarter of the full rate, while the next B\$150,000 is taxed at half the full rate. The balance of chargeable income is taxed at the full rate. For a new company, the first B\$100,000 of chargeable income is exempt from tax. This exemption applies for a company's first three consecutive years of assessment.

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.

**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 Bahrain, China, Hong Kong, Indonesia, Japan, Malaysia, Oman, Pakistan, Singapore, the United Kingdom and Vietnam. Brunei Darussalam has signed double tax treaties with other countries, but these treaties have not yet been ratified. 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
- 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 20% of the qualifying expenditure is given on industrial buildings in the year of expenditure, with a further annual allowance of 4% of qualifying expenditure provided on a straight-line basis until the total expenditure is written off.

*Plant and machinery.* An initial allowance of 40% of the cost of plant or machinery is given on expenditure incurred on or after 1 January 2009, and an annual allowance is given on the declining value of the asset. The rates depend on the type of asset and range from 3% to 25%. Alternatively, a company may choose to write off such expenditure over three years on a straight-line basis. For plant and machinery not exceeding B\$2,000 per item, a company may choose to write off such expenditure fully in the year of acquisition subject to an aggregate cap of B\$30,000 per year. For computer and office automation equipment, a company may also choose to write off such assets fully in the year of acquisition.

*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. Domestic and treaty withholding tax rates

Brunei Darussalam's domestic tax law imposes withholding tax on various payments made 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. The following are the withholding tax rates.

Type of payment	Rate (%)
Interest, commissions, fees or other payments with respect to loans or indebtedness	15
Royalties or other lump-sum payments for the use of movable properties	10
Payments for the use of, or the right to use, scientific, technical, industrial or commercial knowledge or information	10
Technical assistance and service fees	20
Management fees	20
Rent or other payments for the use of movable properties	10
Nonresident directors' remuneration	20

The above withholding tax rates may be reduced under tax treaties. Brunei Darussalam has entered into double tax treaties with Bahrain, China, Hong Kong, Indonesia, Japan, Malaysia, Oman, Pakistan, Singapore, the United Kingdom and Vietnam.

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## A. At a glance

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10
Withholding Tax (%) <sup>(a)</sup>	
Dividends	5 (b)(c)
Interest	5/10 (d)(e)
Royalties from Patents, Know-how, etc.	5/10 (d)(e)
Fees for Technical Services	10 (e)
Rent and Payments Under Lease, Franchising and Factoring Agreements Derived from Sources in Bulgaria	10 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) A European Union (EU) or European Economic Area (EEA) recipient of Bulgarian-source income that is subject to withholding tax may claim a deduction for expenses incurred in earning that income by filing an annual corporate income tax return. The return must be filed by 31 December of the year following the year of accrual of the income.
- (b) This tax does not apply to payments to entities that are resident for tax purposes in Bulgaria or EU/EEA countries.
- (c) This rate may be reduced by tax treaties for dividends distributed to entities not resident for tax purposes in EU/EEA countries.
- (d) Bulgaria has been granted a derogation period to fully implement the EU Interest and Royalties Directive. For the period of 1 January 2011 through 31 December 2014, a 5% rate applies to EU-associated companies (a minimum holding of 25% of the share capital must be maintained for at least 2 years).
- (e) This tax applies to payments to nonresidents only and may be reduced in accordance with an applicable tax treaty.

## 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, in-kind 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 of 10%. No rollover relief is provided. Capital losses are deductible for tax purposes.

Capital gains derived from the sale of shares through the Bulgarian stock market or stock exchanges in EU or EEA countries are exempt from tax. Similarly, losses from sale of shares through such stock exchanges are not deductible for tax purposes.

**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 companies resident for tax purposes in non-EU/EEA countries, as well as on hidden profit distributions to residents of EU/EEA countries.

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 the 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 International Financial Reporting Standards (IFRS) or, for small and medium-sized enterprises, Bulgarian accounting standards. 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 bonuses, 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 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.** Impairments and write-offs of 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, and mobile phones	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 33⅓%.

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

Goodwill arising from business combinations is not 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

Nature of tax	Rate (%)
Real estate property tax; rate varies by municipality	0.01 to 0.45
Real estate transfer tax; rate varies by municipality	0.1 to 3

## E. Miscellaneous matters

**Foreign-exchange controls.** The Bulgarian currency is the leva (BGN). The exchange rate of the leva against the euro (€) 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.** Thin-capitalization provisions regulate the deductibility of interest expenses related to certain transactions such as the following:

- Loans from related and unrelated parties
- Financial leases entered into with related parties
- Bank loans obtained from related parties or guaranteed by related parties

If the total amount of debt of a company exceeds three times the company's equity, the thin-capitalization restrictions on tax deductibility are triggered. The tax deductibility for the net amount of the interest expenses subject to the thin-capitalization provisions (after deduction of any interest income) is limited to 75% of Earnings Before Interest and Tax (EBIT). If the financial result before taking into account the interest expense is a loss, the entire amount of the interest expense is nondeductible.

The add-back under the Bulgarian thin-capitalization rules may be a timing difference because the thin-capitalization rules allow for a five-year carryforward of disallowed interest expenses, subject to the application of the limitations described above.

**Hidden distributions of profit.** Adjustments to taxable income as a result of violations of the arm's length principle are treated as hidden distributions of profit. Hidden distributions are treated like

dividends and are accordingly subject to 5% withholding tax. In addition, an administrative sanction in the amount of 20% of the distributed amount is imposed. The definition of hidden profit distribution has been amended to include amounts not related to the business activity or exceeding the customary market levels for both expenses accrued and for amounts paid or distributed in any form in favor of shareholders, partners or persons related to them, excluding dividends.

## F. Treaty withholding tax rates

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

	Dividends (y) %	Interest %	Royalties %
Albania	5/15 (h)	10	10
Algeria	10	10	10
Armenia	5/10 (m)	5/10 (ll)	5/10 (mm)
Austria (ss)	0/5 (tt)	0/5 (uu)	5 (vv)
Azerbaijan	8	0/7 (dd)	5/10 (ee)
Bahrain	0/5 (nn)	5	0/5 (oo)
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
Estonia	0/5 (ff)	0/5 (gg)	5
Finland	10 (c)	0	0/5 (d)
France	5/15 (e)	0	5
Georgia	10	10	10
Germany (pp)	5/15 (qq)	0/5 (rr)	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
Jordan	10	0/10 (hh)	10
Kazakhstan	10	10	10
Korea (North)	10	10	10
Korea (South)	5/10 (j)	10	5
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)	0/10 (kk)	5
Macedonia	5/15 (p)	0/10 (hh)	10
Malta	0 (g)	0	10
Moldova	5/15 (h)	10	10
Mongolia	10	10	10

	<b>Dividends (y)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Morocco	7/10 (q)	10	10
Netherlands	5/15 (i)	0	0
Norway	15	0	0
Poland	10	10	5
Portugal	15	10	10
Qatar	0	0/3 (ww)	5
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)
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)
Turkey	10/15 (o)	10	10
Ukraine	5/15 (i)	10	10
United Arab Emirates	0/5 (ii)	0/2 (jj)	0/5 (jj)
United Kingdom	10	0	0
United States	0/5/10 (bb)	0/5 (cc)	5
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\$100,000 or an 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.
- (bb) The 5% rate applies if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends. The 0% rate applies if the beneficial owner is a pension fund resident for tax purposes in the United States. Other conditions must also be observed.
- (cc) The 0% rate applies if any of the following circumstances exist:
- The beneficial owner is an institution wholly owned by the state.
  - The beneficial owner is a financial institution, provided the interest is not paid with respect to a back-to-back loan.
  - The beneficial owner is a pension fund, provided that the interest is not derived from the carrying on of a business, directly or indirectly, by such pension fund.
  - The interest concerns debt claims guaranteed, insured or financed by the state.
- (dd) The 0% rate applies if either of the following applies:
- The payer or the recipient of the interest is the government, an administrative territorial subdivision or a local authority thereof, the national bank of either contracting state, the state or the State Oil Fund of Azerbaijan.
  - The interest is paid with respect to a loan guaranteed by any of the institutions mentioned in the first bullet.
- The 7% rate applies to other cases.
- (ee) The 5% rate applies to royalties received for the use of patents, designs or models, plans, secret formulas or processes, or for information, regarding industrial, commercial and scientific experience (know-how). The 10% rate applies in all other cases.
- (ff) The 0% rate applies if the beneficial owner of the dividends is a company holding directly at least 10% of the capital of the payer. The 5% rate applies in all other cases.
- (gg) The 0% rate applies if any of the following circumstances exists:
- The interest is paid to the government, local authority or the central bank of a contracting state.
  - The interest is paid on a loan granted, insured or guaranteed by any of the institutions mentioned in the first bullet.

- The interest is paid with respect to the sale on credit of industrial, commercial or scientific equipment.
  - The interest is paid on a loan granted by a bank.
- (hh) The 0% rate applies to interest originating from one of the contracting states that is paid to the government or the central bank of the other state.
- (ii) The 0% rate applies if the beneficial owner of the income derived from one of the contracting states is any of the following:
- The other state or a political subdivision, local government, local authority or the central bank of the other state
  - The Abu Dhabi Investment Authority, Abu Dhabi Investment Council, International Petroleum Investment Company or any other institution created by the government, a political subdivision, a local authority or a local government of the other state, which is recognized as an integral part of the government, as agreed in an exchange of letters between the competent authorities of the contracting states
- (jj) The 0% rate applies to income originating from one of the contracting states that is paid to any of the following:
- The other state, a political subdivision, a local government, a local authority or the central bank of the other state
  - The Abu Dhabi Investment Authority, Dubai Investment Office, International Petroleum Investment Company, Abu Dhabi Investment Council or any other institution created by the government, a political subdivision, a local authority or a local government of the other state, which is recognized as an integral part of the government, as agreed through the exchange of letters between the competent authorities of the contracting states
- (kk) The 0% rate applies if any of the following circumstances exists:
- The interest is paid with respect to the sale on credit of industrial, commercial or scientific equipment.
  - The interest is paid with respect to the sale on credit of goods or merchandise delivered by an enterprise to another enterprise.
  - The interest is paid on a loan, not represented by bearer shares, granted by a financial institution or by the government.
- (ll) The 5% rate applies to interest paid on loans granted by banks or financial institutions.
- (mm) The 5% 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.
- (nn) The 0% rate applies to dividends paid to the government, a local authority, statutory body, agency, the national bank or a wholly owned company of a contracting state.
- (oo) The 0% rate applies to royalties paid to the government, a local authority, statutory body, agency, the national bank or a wholly owned company of a contracting state.
- (pp) A new double tax treaty with Germany entered into force in December 2010. It applies to income arising after 1 January 2011.
- (qq) The 5% rate applies if the recipient of the income owns at least 10% of the capital of the company paying the dividends.
- (rr) The 0% rate applies to interest paid on loans granted by banks and municipal and state institutions. The 5% rate applies in all other cases.
- (ss) A new double tax treaty with Austria entered into force in February 2011. It applies to income arising after 1 January 2011.
- (tt) Under the new treaty, a 0% rate applies to dividends distributed to Austrian companies. A 5% rate applies to distributions to partnerships and in all other cases.
- (uu) Under the new treaty, a 0% rate applies to interest paid on the following loans:
- Loans granted by banks
  - Loans granted to the government of Austria or to the government of Bulgaria
  - Loans granted, insured or guaranteed by the Oesterreichische Kontrollbank AG or any comparable Bulgarian institution for purposes of promoting exports
  - Loans granted in connection with the sale on credit of industrial, commercial or scientific equipment.
- A 5% rate applies in all other cases.
- (vv) Under the new treaty, a 5% rate applies to royalties.
- (ww) The 0% rate applies to interest paid on loans granted by the Bulgarian National Bank, the Qatar Central Bank, the Qatar investment fund, the capital pension authority of Qatar, administrative authorities, the Qatar Bank for development, other financial institutions wholly owned by the government of Qatar and other banks or institutions mutually agreed on by the contracting states.

## Cambodia

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### A. At a glance

Tax on Profit Rate (%)	20
Capital Gains Tax Rate (%)	20
Withholding Tax (%) (a)	
Dividends	14
Interest	14
Royalties	14
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (b)

- (a) The listed withholding tax rates apply to payments to nonresident taxpayers. For a listing of withholding taxes applicable to payments to resident taxpayers and further details regarding withholding taxes applicable to nonresident taxpayers, see Section B.
- (b) See Section C.

### B. Taxes on corporate income and gains

**Tax on profit.** Tax on profit is calculated on taxable income inclusive of capital gains and passive income, such as interest, royalties and rent.

The tax on profit is imposed on the worldwide income of resident taxpayers. It is imposed on the Cambodian-source income of nonresident taxpayers. For companies, resident taxpayers are enterprises organized, managed or having a principal place of business in Cambodia. A company that is not a resident taxpayer and that receives income from a Cambodian source is considered to be a nonresident taxpayer.

**Tax on profit rates.** The standard rate of tax on profit for legal persons is 20%.

A tax rate of 30% applies to income derived from oil or natural gas production sharing contracts and from the exploitation of natural resources including timber, ore, gold, and precious stones.

A tax rate of 5% is imposed on the gross premium income of insurance companies engaged in the providing of insurance or reinsurance for life, property or other risks.

**Minimum tax.** Minimum tax is a separate annual tax imposed at a rate of 1% of annual turnover inclusive of all taxes, except value-added tax (VAT). If the tax on profit liability exceeds the amount of the minimum tax, the taxpayer is not liable for the minimum tax.

**Additional Tax on Profit.** Additional Tax on Profit (AToP) is imposed on the distribution of retained earnings to local and overseas shareholders. AToP is payable by the distributing company. The AToP rate varies according to the rate of tax on profit that was imposed on the retained earnings. The following are the rates of AToP.

Rate of tax on profits (%)	Amount of AToP
0	Dividend x 20/100
9	Dividend x 11/91
20	0
30	0

**Investment incentives.** A Qualified Investment Project (QIP) registered and approved by the Council for the Development of Cambodia is entitled to the incentives described below.

An exemption from minimum tax and an exemption from the tax on profit apply for a period that consists of the Trigger Period plus 3 years plus the Priority Period. The maximum Trigger Period is the first year of profit or the third year after the QIP earns its first revenue, whichever is earlier. The Priority Period, which is specified in the Finance Law and varies by project, may have a duration of up to three years.

QIPs are also eligible for import duty exemption with respect to the importation of production equipment, construction materials, raw materials, intermediate goods and accessories that serve production.

**Capital gains.** All realized gains (including capital gains) are considered to be income. Tax on capital gains is not separately imposed in Cambodia. Capital gains derived from the disposal of fixed assets are treated as ordinary income and generally taxed at the standard tax on profit rate of 20%.

**Administration.** Resident taxpayers must file annual tax on profit or minimum tax returns within three months after the end of the tax year.

Resident taxpayers must make monthly prepayments of tax on profit, which are each equal to 1% of monthly turnover inclusive of all taxes, except VAT. The prepayments must be made by the 15th day of the month following the month in which the tax liability arose. The tax payment can be used to offset the annual tax on profit or minimum tax liability. Prepayments of tax on profit are not required during the period of exemption from the tax on profit.

**Dividends.** Dividends paid to nonresident taxpayers are subject to withholding tax at a rate of 14%.

### Withholding taxes

*Payments to resident taxpayers.* Resident taxpayers carrying on business in Cambodia must withhold tax from payments made to other resident taxpayers at the following rates.

Payment	Rate (%)
Interest paid to recipients other than domestic banks and saving institutions	15
Interest paid on non-fixed term saving accounts by domestic banks or saving institutions	4
Interest paid on fixed-term saving accounts by domestic banks or saving institutions	6
Royalties	15
Rent paid for movable and immovable property	10
Payments to individuals for services, including management, consulting and similar services	15

*Payments to nonresident taxpayers.* Resident taxpayers must withhold tax at a rate of 14% on the following payments to nonresident taxpayers:

- Dividends
- Interest
- Royalties, rent, and other income connected with the use of property
- Compensation for management or technical services (not defined)

In general, the above withholding taxes are considered to be final taxes. However, the withholding tax on rent paid to registered resident taxpayers may be offset against the tax on profit liability.

If withholding tax is not withheld from the recipient, it is borne by the payer. Accordingly, the withholding tax is not deductible for purposes of the tax on profit.

*Withholding tax returns and payments.* Resident taxpayers must submit withholding tax returns and remit withholding taxes to the tax authorities by the 15th day of the following month.

**Foreign tax relief.** Cambodia allows a credit against the tax on profit for foreign taxes paid on foreign-source income if supporting documentation exists.

### C. Determination of trading income

**General.** Taxable profit equals the difference between total income and allowed expenses that are incurred to carry on the business.

Allowable deductions include most expenses incurred in the course of carrying on a business enterprise with certain limitations. These limitations include the following:

- The deduction of charitable contributions to specified organizations is limited to 5% of taxable profit before deducting the amount of the charitable contributions.
- Depreciation is allowed as a deduction in accordance with rates and methods set forth in the tax regulations.
- Deductions for interest are limited to interest income plus 50% of taxable profit excluding interest income and expenses. The disallowed interest may be carried forward to subsequent years and deducted subject to the same limitations.

Nondeductible expenses include the following:

- Expenses incurred on activities generally considered to be amusement, recreation, entertainment or on the use of any means with respect to such activities
- Losses on direct or indirect sales or exchanges of property between related parties
- Penalties, additional tax and late payment interest imposed for violation of the tax regulations
- Donations, grants or subsidies made to other than specified organizations

**Provisions.** Provisions for losses or expenses that have not occurred are not allowed for tax purposes even if the incurrence of such losses or expenses is probable. However, domestic banks or savings institutions may establish provisions for bad debts.

**Tax depreciation and amortization.** The tax regulations divide fixed assets into four classes for purposes of depreciation and specify the depreciation methods and rates for the classes. The following are the classes.

Classes	Assets	Method	Rate (%)
1	Building and structures	Straight-line	5
2	Computers, electronic information systems, software and data handling equipment	Declining-balance	50
3	Automobiles, trucks, and office furniture and equipment	Declining-balance	25
4	Other tangible property	Declining-balance	20

A QIP (see Section B) may apply a special depreciation rate of 40% in the year of purchase or in the first year the tangible assets are placed into operation, if later. If the enterprise elects to use the exemption period for the tax on profit, the special depreciation rate does not apply.

Intangible assets with a limited useful life, such as patents, copyrights, drawings, models, and franchises, can be amortized over their useful life on a straight-line basis. If the life of intangible assets cannot be determined, the assets are amortized using the straight-line method at a rate of 10%.

**Relief for losses.** Losses can be carried forward to offset future taxable profit for the following five years. The carryback of losses is not allowed.

The carryforward of losses is subject to restrictions including continuity of ownership and conducting the same business activities.

**Groups of companies.** Cambodia does not allow consolidated tax filing or provide other group tax relief.

## D. Other significant taxes

**Value-added tax.** Resident taxpayers providing taxable supplies must register for value-added tax (VAT). Taxable supplies include supplies of goods or services by taxable persons in Cambodia.

The standard rate of VAT is 10%. A 0% rate of VAT applies to exports of goods and services including international transportation of passengers and goods and services with respect to such transportation. It also applies to enterprises in supporting industries and subcontractors that supply certain goods and services to exporters.

The tax law specifies certain nontaxable supplies.

A resident taxpayer must complete the registration for VAT within 30 days after the date on which it becomes a taxable person. The filing of the VAT returns and payment of VAT must be made by the 20th day of the following month.

**Other taxes.** Cambodia imposed various other taxes, including the following:

- Specific Tax on Certain Merchandises and Service
- Tax for Public Lighting
- Accommodation Tax
- Patent Tax
- Registration Tax (property transfer tax)
- Fiscal Stamp Tax
- Tax on Immovable Property
- Tax on Unused Land
- Tax on Means of Transportation

## E. Foreign-exchange controls

The Cambodian currency is the Khmer riel (KHR).

Cambodia does not impose any restrictions on the purchase of foreign currencies through authorized financial institutions.

## F. Tax treaties

Cambodia has not entered into any double tax treaties.

# 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, Digital Services and Professional Activities	15 (g)
Specific Payments to Resident Individuals or Companies	5.5 (h)
Branch Remittance Tax	16.5
Net Operating Losses (Years)	
Carryback	0
Carryforward	4

- (a) The minimum tax is generally 1.1%, 3.3% or 5.5% of turnover. For further details, see Section B.
- (b) In certain circumstances, the tax is deferred or reduced (see Section B).
- (c) An optional final withholding tax is available for CIE Petroleum Contractors and Subcontractors TSR (foreign companies in Cameroon that have contracted with petroleum companies established in Cameroon). The rate of this tax is 15% of turnover. The 2011 Financial Law extended this tax regime to foreign individuals or companies that carry out activities on a casual (day-to-day) basis in Cameroon.
- (d) This withholding tax also applies to directors' fees, nondeductible expenses and adjustments of profits following a tax examination.
- (e) This withholding tax applies to residents and nonresidents.
- (f) Interest on savings of up to XAF 10 million is exempt from withholding tax. Interest on state bonds is exempt from corporate income tax and the tax on movable capital (this tax is withheld at a rate of 16.5% from income on shares and negotiable bonds and from certain other income).
- (g) This withholding tax applies to nonresidents. The 2012 Financial Law provides that this tax also applies to "software," which is defined as computer applications and programs relating to the operation or functioning of an enterprise.
- (h) This withholding tax applies to payments made to persons in the self-employed professions, trade intermediaries, door-to-door salesmen, magistrates and representatives of the law (attorneys, bailiffs and notaries). The 10% surtax applies to the withholding tax rate of 5%, resulting in a total withholding tax rate of 5.5%.

## B. Taxes on corporate income and gains

**Corporate income tax.** Cameroonian companies are taxed on the territoriality principle. As a result, Cameroonian companies carrying on a trade or business outside Cameroon are not taxed in Cameroon on their foreign-source profits. Cameroonian 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 Cameroonian corporate tax on Cameroonian-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 payable is higher for companies under the simplified tax regime (3.3% for non-importing traders, and 5.5% for producers, service providers and importation traders). The minimum tax is creditable against corporate tax due for the current financial year.

Profits realized in Cameroon by branches of foreign companies are presumed to be distributed and are consequently subject to a

branch withholding tax of 16.5% on after-tax income. This rate is subject to reduction by treaty.

Manufacturers, wholesale dealers, forestry farms and importers must add a 3% or 5% tax to their bills for sales to retail merchants, depending on whether they are under the simplified tax regime. This tax is imposed on the sales price before the addition of the 10% surtax. Retail merchants, gas-station owners and exporters may credit the tax against their quarterly or monthly installments of their corporate income tax. Companies that do not possess a taxpayer identification card are subject to a 5% or 10% tax instead of the 3% or 5% tax 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.

Capital gains realized on the Cameroonian stock market are exempt from corporate income tax and the tax on movable capital.

**Administration.** The fiscal year runs from 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% per 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 a penalty of 10% per month of delay, up to a maximum of 30% of the tax due. This penalty applies only in the case of a voluntary payment from the taxpayer. It does not apply in the case of a tax audit.

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, 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*).

**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 Cameroonian tax under the territoriality principle is taxable, net of the foreign tax. The French tax treaty, however, provides a tax credit that corresponds to withholding tax on passive income.

### 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. Expenses that are not deductible include the following:

- Head office overhead, research costs and technical, financial and administrative assistance fees paid to nonresidents, which exceed either of the following:
  - 10% of taxable profits before their deduction.
  - 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 Cameroonian 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 for services on behalf of companies located in Cameroon that exceed 5% of purchased imports and sales of exports.
- Amounts set aside for self-insurance.
- Certain specific charges (such as contributions other than those for retirement paid to a foreign social security organization, which are deductible up to a limit of 15%, and premium insurance paid to companies located in Cameroon for employees' retirement indemnities), gifts, subsidies and penalties (to some extent).
- Expenses paid in cash of XAF 1 million or more.
- Expenses paid to local suppliers without reference to a Cameroonian tax identification number.
- Expenses paid to natural persons or nonresident legal entities established in territories or states considered to be tax havens.

**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.

Insurance companies may deduct technical provisions provided by the Conférence Interafricaine des Marchés d'Assurance (CIMA) Code.

**Capital allowances.** Land and intangible assets, such as goodwill, are not depreciable for tax purposes. Other fixed assets may be depreciated using the straight-line method at rates specified by the tax law. Small equipment and other items that have a value not exceeding XAF 400,000 without tax are directly accounted for as charges and considered deductible expenses.

**Legal revaluation of fixed assets.** The 2011 Financial Law established a regime for the legal revaluation of tangible and intangible fixed assets, regardless of whether the assets are depreciable. The revaluation must occur by 31 December 2013. The capital gain resulting from revaluation is subject to a withholding tax at a rate of 5%. This is a final tax. The 5% withholding tax is not due if the amount of the capital gain is reinvested within two financial years.

**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.** The Cameroonian tax law does not provide for the fiscal integration of Cameroonian companies equivalent to a consolidated filing position.

#### D. Other significant taxes

The following table 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	2 to 15
Payroll taxes, paid by employer	2.5
Social security contributions on an employee's annual gross salary, limited to XAF 3,600,000	
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

	Dividends %	Interest %	Royalties %
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	12	15	15
Nontreaty countries	16.5	16.5 (f)	15

- (a) The 15% rate applies to payments from a Cameroonian source. The 20% rate applies to payments from a Canadian source.
- (b) If from a Cameroonian source, the payments are subject to withholding tax under Cameroonian 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.

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**A. At a glance**

Federal Corporate Income Tax Rate (%)	15 (a)
Federal Capital Gains Tax Rate (%)	7.5 (a)(b)
Branch Tax Rate (%)	15 (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 2012 rates are applied to general 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 on general income may vary from approximately 25% to 31%.
- (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) 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 (the rate may be reduced by a tax treaty). 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 2012 is 38%, but it is reduced to 15% by an abatement of 10 percentage points on a corporation's taxable income earned in a province or territory and a general rate reduction of 13 percentage points on a corporation's full-rate taxable income. 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 acquisition 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 33⅓% 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 is deductible for income tax purposes.

**Inventories.** For tax purposes, inventories may be valued at the lower of cost or 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 (a)
Computers	55
Office equipment	20
Motor vehicles	30
Machinery and equipment	20 (b)

(a) Certain eligible nonresidential buildings may qualify for a rate of 6% or 10% (election required).

(b) For machinery and equipment used primarily in manufacturing and processing, the rate is generally 30%. A straight-line rate of 50% applies if the machinery and equipment is acquired after 18 March 2007 and before 2012 (extended to 2014 under 2011 Federal budget proposals which are expected to be enacted before the end of 2012).

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 proceeds from the disposition of an asset 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 following table 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	5
Harmonized Sales Tax, a value-added tax, applies to a broad range of goods and services in certain provinces	Up to 15
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\$1 billion	1.25
Provincial/territorial income taxes, on taxable income allocated to jurisdictions in which corporations have permanent establishments	

Nature of tax	Rate (%)
(lower rates may apply to manufacturing or processing earnings and active small business earnings)	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 (the only capital tax remaining in 2012 is in Nova Scotia, and it is eliminated, effective from 1 July 2012)	Up to 0.05
Provincial payroll taxes; varies by province; paid by employers	Up to 4.26
Canada Pension Plan, on pensionable earnings between C\$3,500 and C\$48,300 (amounts in effect for 2011)	
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\$44,200 (amount in effect for 2011)	
Employee	1.78
Employer (1.4 times the employee rate)	2.49

## 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." The 29 March 2012 Federal Budget proposals will reduce the debt-to-equity ratio to 1.5 to 1 and extend the application of the rules to partnerships of which a Canadian resident corporation is a member. 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.
- They have a fair market value representing 25% or more of the fair market value of all of the issued and 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 together 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 or a Tax Information Exchange Agreement (TIEA). Dividends are taxable in Canada if they are derived from passive operations (with certain exceptions) or any operations in a nontreaty or non-TIEA 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 (with certain exceptions) in the year such income is earned, regardless of whether such income is currently paid to the shareholder, except in certain specified circumstances. In addition, any taxpayer is taxed on its shares of any other type of income if the income is earned through a permanent establishment located in a nontreaty or non-TIEA country (except a country with which Canada has entered into negotiations for a TIEA or has sought to enter into such negotiations within the last 60 months).

**Foreign investment entities.** The foreign investment entities (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.

After the inclusion of proposed measures regarding FIEs in the federal budget tabled on 4 March 2010, the Minister of Finance announced a dramatic overhaul of the proposed rules applicable to FIEs by releasing on 27 August 2010 draft legislative proposals for public consultation. The new rules build on the existing offshore investment fund property regime and entirely dispense with the previous FIE proposals, which were to have been effective for tax years that began after 2006. Taxpayers that voluntarily complied with the outstanding FIE proposals in previous years may choose to either have those years reassessed or claim a deduction in the current year for the excess income that was previously reported. If the draft legislative proposals are enacted in their current form, the FIE rules may subject taxpayers to Canadian taxation with respect to their investment in offshore investment funds' properties on a current basis. In general, the FIE rules will apply to a taxpayer if the following circumstances exist:

- The taxpayer holds an interest in property (such as shares of corporations, trust units, interests in partnerships or debts) that is an interest in a nonresident entity.
- The interest may reasonably be considered to derive its value, directly or indirectly, from portfolio investments of that nonresident entity in certain assets.
- It may reasonably be considered that one of the principal purposes for the taxpayer holding the interest is to derive a benefit from the portfolio investment in such a manner that the taxes on the income, profits and gains from such assets are significantly less than the tax under Part I of the Canadian Income Tax Act.

If the criteria mentioned are met for a particular tax year, the taxpayer must include in its income for the year, the amount by which the product obtained by multiplying the designated cost of the investment of the taxpayer by a prescribed rate of interest established under the Income Tax Regulations exceeds the taxpayer's income for the year from the FIE.

**Upstream loans from foreign affiliates.** The 19 August 2011 Legislative Proposals contained a new rule dealing with upstream loans. Under this rule, Canadian taxpayers will be required to include in their income a portion of the principal amount of loans made by their foreign affiliates to them, or to certain non-arm's length persons (other than controlled foreign affiliates that are effectively Canadian controlled), corresponding to their proportionate interest in the lending foreign affiliate.

Similar to the domestic shareholder loan rule, exceptions exist for indebtedness repaid within two years after the date the indebtedness arose, provided that the repayment is not part of a series of loans or other transactions and repayments, and for indebtedness arising in the ordinary course of business of the creditor.

The income inclusion arising under the new upstream loan rule may be offset in whole or in part by a deduction if a hypothetical dividend paid in the year of the making of the loan would have enjoyed a full deduction from the income of the Canadian taxpayer with respect to the exempt surplus and/or taxable (and hybrid) surplus of the lending affiliate and if certain other conditions are met. In addition, the rules provide for a deduction equal to amounts previously included in income in the year that the loan is eventually repaid.

The Explanatory Notes to the proposals state that the upstream loan rule is intended to be an antiavoidance rule that prevents taxpayers from making synthetic dividend distributions from foreign affiliates to avoid what would otherwise be income inclusions that are not fully offset by the surplus deductions referred to above. The rules have a very broad application. They catch several situations that do not involve upstream loans and go well beyond the stated intent of the proposals. For example, they apply to downstream loans to foreign affiliates that are not "Canadian" controlled foreign affiliates.

**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. If an acquisition of control occurs, special rules apply to the determination and treatment of capital losses, business losses, and certain tax attributes with respect to foreign affiliates.

**Capital gains realized by nonresidents.** Subject to applicable tax treaties, nonresidents must pay Canadian tax on their net taxable capital gains derived from the disposition of “taxable Canadian property” (TCP). Such property includes, but is not limited to, the following:

- Real property located in Canada
- Shares of private corporations, interests in partnerships or interests in trusts that, within the preceding 60 months, derived their value principally from real or immovable property located in Canada
- Canadian resource property and timber resource property, or interests in such properties
- Shares of Canadian public corporations (in limited circumstances)
- Property used in a business carried on by the nonresident in Canada

The above definition of TCP applies for determination of TCP status after 4 March 2010 and generally reduces the compliance burden of nonresidents disposing of shares of Canadian corporations that do not derive their value principally from real estate or immovable properties. Consequently, a nonresident’s liability for Canadian tax and obligation to comply with Section 116 filing requirements no longer apply to most dispositions of share investments in private or public corporations occurring after 4 March 2010, regardless of the application of a relevant treaty or the level of ownership. Similarly, nonresident vendors are no longer required to file income tax returns to report gains or losses arising from the disposition of such properties.

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. For dispositions of taxable Canadian property occurring after 2008, excluded property includes, among other items, property that is treaty-protected property of the vendor. In the case of a disposition between a purchaser and a seller not dealing at arm’s length, for treaty protected property to qualify as excluded property, a notice in a prescribed form must be sent to the CRA.

The purchaser must generally withhold and remit to the Receiver General up to 25% (50% in certain circumstances) of the amount by which the cost to the purchaser of the property (other than excluded property) exceeds the amount stipulated in the CRA clearance certificate on account of the nonresident’s potential tax liability resulting from the disposition. In the absence of a clearance certificate, the purchaser must generally withhold and remit 25% of the purchase price (50% in certain circumstances). The withholding and remittance obligation is referred to as the “source deduction.” Similar requirements apply for the province of Quebec.

The purchaser remains liable for any source deduction not made in the event it is later determined that the property disposed of does not qualify as excluded property, unless one of the safe harbor rules described below applies. The first safe harbor rule provides that a purchaser is not liable for any source deduction if the purchaser had no reason to believe that the vendor was not resident in Canada after reasonable inquiry. Similarly, a purchaser is not held liable for any source deduction if the property (disposed of after 2008) is acquired from a nonresident vendor and if all of the following conditions are satisfied:

- After reasonable inquiry, the purchaser concludes that the vendor is a resident of a country with which Canada has a tax treaty.
- The property is treaty-protected property of the vendor under the tax treaty with the particular treaty country.
- The purchaser sends a notice in a prescribed form to the CRA within 30 days after the acquisition, setting out the date of acquisition, the name and address of the nonresident vendor, a description of the property, the amount paid or payable by the purchaser of the property and the name of the particular treaty country.

In addition, the requirement for the nonresident vendor to file a Canadian tax return may be removed. In general, a nonresident vendor is exempt from filing a Canadian tax return with respect to taxable Canadian properties if the following criteria are satisfied:

- No Canadian “corporate income tax” is payable for the tax year.
- The nonresident is not currently liable to pay any Canadian tax with respect to any previous tax year.
- Each taxable Canadian property that is disposed of during the year is “excluded property,” which now includes treaty-protected property in certain circumstances (see above) and property with respect to which the Minister of National Revenue has issued a nonresident clearance certificate.

**Functional currency reporting.** Canada has introduced new rules with respect to functional currency reporting. These new rules are intended to address the concerns of Canadian corporations that are required to use a currency other than the Canadian dollar as their “functional currency” for financial statement reporting purposes and the Canadian dollar for tax purposes.

In general, all Canadian taxpayers are required to use the Canadian dollar as their reporting currency for tax purposes. However, “qualifying corporations” may now elect to determine their “Canadian tax results” in their “functional currency.” In general, a “qualifying corporation” is a corporation resident in Canada (with some exceptions) that has a “functional currency” and makes an election in prescribed form. For these purposes, the taxpayer’s “functional currency” is defined as the currency of a country other than Canada if the following conditions are satisfied:

- The currency is a “qualifying currency.” A qualifying currency includes the U.S. dollar, the euro, the British pound, and the Australian dollar. This is not an exhaustive list. A prescribed currency could also qualify.
- The currency is the primary currency in which the taxpayer maintains its records and books of account for financial reporting purposes.

## F. Treaty withholding tax rates

As noted in Section A, in general, Canada's domestic tax law provides exemptions from Canadian withholding tax on interest paid or credited to arm's length nonresident persons, regardless of their country of residence. 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 obligation with respect to real property located outside of Canada (certain conditions apply)
- Interest paid to a prescribed international institution or agency
- 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.
- 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.

Similarly, under proposed amendments, withholding tax will apply to the following:

- Interest that is not "fully exempt interest" and is paid or payable to a person with whom the payer is not dealing at arm's length
- Interest with respect to a debt or other obligation to pay an amount to a person with whom the payer is not dealing at arm's length

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 (cccc)	10/0	10
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	15/0	10
Barbados	15	15/0	10/0 (eeee)
Belgium	15/5 (uu)	10/0	10/0 (rrr)
Brazil	25/15 (ooo)	15/10/0	25/15 (ttt)
Bulgaria	15/10 (ee)	10/0	10/0
Cameroon	15	15/0	15
Chile	15/10 (u)	15/0	10
China (ssss)	15/10 (uuu)	10/0	10

<b>Residence of recipient</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties (b)(c) %</b>
Colombia (ffff)	15/5 (gggg)	10	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	15/10/5 (q)	10/0	10/0 (g)
Dominican Republic	18	18/0	18/0 (pppp)
Ecuador	15/5 (mm)	15/0	15/10 (aaa)
Egypt	15	25/15/0 (f)	15 (qqqq)
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 (ccc)	15	10/0	10
Germany	15/5 (ll)	10/0	10/0 (p)
Greece (hhh)	15/5 (iii)	10/0	10/0 (jjj)
Guyana	15	15/0	10
Hungary	15/10/5 (aa)	10/0	10/0 (vvv)
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 (South)	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 (qqqq)
Lebanon (ff)	15/5	10/0	10/5
Lithuania	15/5 (x)	10/0	10 (qqqq)
Luxembourg	15/10/5 (rrrr)	10/0	10/0 (jj)
Malaysia	15	15/0	15
Malta	15	15/0	10/0 (pppp)
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)
Namibia (kkkk)	15/5 (llll)	10/0	10/0
Netherlands	15/10/5 (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	15/0	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
Romania	15/5 (mmm)	10/0	10/5 (iii)
Russian Federation	15/10 (uuu)	10/0	10/0 (p)

<b>Residence of recipient</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties (b)(c) %</b>
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	15/10/5 (bb)	10/0	10/0 (jj)
Switzerland	15/5/0 (n)	10/0 (mmmm)	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	20/15/0 (aaaa)
Turkey (nnnn)	20/15 (oooo)	15/0	10
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)
United Kingdom (tttt)	15/5 (ddd)	10/0	10/0 (fff)
United States (dddd)	15/5 (h)	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	15/0	15
Zimbabwe	15/10 (u)	15/0	10
Nontreaty countries	25	0	25 (k)

- (a) A 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) The fifth protocol to the 1980 tax treaty between Canada and the United States, which entered into force on 15 December 2008, generally provides for a gradual reduction to the withholding tax rate on interest paid or credited to non-arm's length U.S. residents. Under the protocol, the following withholding tax rates apply:
- 7% for interest paid during the 2008 calendar year
  - 4% for interest paid during the 2009 calendar year
  - 0% for interest paid after the 2009 calendar year

The reduced rates 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). For further information regarding the protocol, see footnote (dddd). Withholding tax is not imposed 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. A new protocol amending the tax treaty between Canada and Switzerland was signed on 22 October 2010, but is not yet in force. The new protocol provides that no tax will be withheld if a dividend is paid by a resident of a contracting state to a resident of the other contracting state that operates or administers pension or retirement plans for individuals who are resident in that other contracting state and if the dividend is not derived from the carrying on of a trade or a business.
- (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. The 10% rate applies if the dividends are paid by a nonresident-owned investment corporation that is a resident of Canada to a beneficial owner that is a resident of Denmark and that holds directly or indirectly at least 25% of the capital of the company paying the dividend. The 15% rate applies in all other cases.
- (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. The 10% rate applies to dividends that are paid by a nonresident-owned investment corporation resident in Canada to a company that is a resident of Hungary and that controls at least 25% of the voting power in the company paying the dividends and the beneficial owner of such dividends. The 15% rate applies to all other cases.
- (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 10% rate applies to dividends paid by a nonresident-owned investment corporation resident in Canada to a beneficial owner resident in Sweden that controls directly at least 10% of the voting power, or holds at least 25% of the capital, of the corporation paying the dividends. 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 10% rate applies to dividends paid by a nonresident-owned investment corporation that is a resident of Canada to a beneficial owner that is a company (other than a partnership) resident of the Netherlands and that owns at least 25% of the capital of, or controls directly or indirectly at least 10% of the voting power in, the company paying the dividends. 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 in 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 in the payer.
- (oo) The 5% rate applies if the recipient is a company holding directly or indirectly at least 10% 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. The 15% rate applies in all other cases.
- (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. The 15% rate applies in all other cases.
- (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 stock 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 (other than a partnership) that is a beneficial owner and controls directly at least 25% of the voting power in 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 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 of, or the right to use, trademarks, motion picture films and films or videotapes for use in connection with television
  - 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.
- (cccc) The 5% rate applies if, at the time the dividend is declared, the recipient is a company holding directly at least 25% of the capital of the payer and if the capital invested by the recipient exceeds US\$100,000. The 15% rate applies in all other cases.
- (dddd) On 15 December 2008, the fifth protocol to the 1980 tax treaty between Canada and the United States entered into force. The following are amendments contained in the protocol that affect cross-border payments:
- The withholding tax on cross-border interest payments will be eliminated. The protocol provides that the withholding tax rate on interest payments will be reduced to 0% (phased out over a three-year period with respect to debt between parties that are “related”). For further details, see footnote (i).
  - A “Hybrid Entity Clause” is introduced with respect to income, profits or gains derived through or from certain “fiscally transparent” entities. The protocol can extend treaty relief to income earned through certain “fiscally transparent” entities, such as limited liability corporations and certain other hybrid entities. The protocol may also deny treaty benefits with respect to income derived through or from certain “fiscally transparent” entities.
  - The protocol provides that the existing limitation on benefits (LOB) provisions, which are currently applicable for U.S. tax purposes only, will also become operative for Canadian tax purposes. The comprehensive LOB article, designed to counter “treaty shopping” abuses, is a significant development in the Canadian tax landscape and could operate to deny treaty benefits in many situations in which treaty entitlement had never come under question, including situations in which treaty shopping was not a consideration. Consequently, an analysis is required in each case in which payments are made to an entity that may have nonqualifying U.S. or Canadian owners or owners that are residents of other countries, including in certain circumstances, public companies.
- (eeee) The 0% rate applies to copyright royalties and similar payments with respect to the production or reproduction of literary, dramatic, musical or artistic works.
- (ffff) This treaty was signed on 21 November 2008, but it has not yet been ratified.
- (gggg) The 5% rate applies if, at the time the dividend is declared, the recipient is a company holding directly or indirectly at least 10% of the voting power of the payer. The 15% rate applies in all other cases.
- (hhhh) This treaty was signed on 29 June 2009, and entered into force on 16 December 2010. The tax treaty applies to withholding taxes, effective from 1 January 2011 and to other taxes for tax years beginning on and after 1 January 2011.
- (iiii) The 5% rate applies if, at the time the dividend is declared, the recipient is a company holding directly or indirectly at least 25% of the capital of the payer. The 15% rate applies in all other cases.
- (jjjj) The 0% rate applies to copyright royalties and similar payments with respect to the production or reproduction of cultural or artistic works (excluding 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).
- (kkkk) This treaty was signed on 25 March 2010, but it is not yet in force.
- (llll) The 5% rate applies if the recipient of the dividends is a company that owns directly at least 25% of the shares, or controls directly or indirectly 25% of the voting power, of the payer.
- (mmmm) The new protocol to the tax treaty between Canada and Switzerland was signed on 22 October 2010, but it is not yet in force. It provides that interest payments made to a beneficiary in the other contracting state will not be subject to withholding tax if the beneficiary is not related to the payer.
- (nnnn) These are the withholding tax rates under a tax treaty between Canada and Turkey, which was signed on 14 July 2009, and entered into force on 4 May 2011. The tax treaty applies to withholding taxes, effective from 1 January 2012, and to other taxes for tax years beginning on or after 1 January 2012.
- (oooo) The 15% 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.
- (pppp) The 0% rate applies to royalties pertaining to certain cultural works.

- (qqqq) The last paragraph of the royalties article contains a most-favored nation clause in favor of Canada.
- (rrrr) The 5% rate applies if the beneficial owner of the dividends is a corporation that holds directly at least 10% of the voting power of the payer. The 10% rate applies if the dividends are paid by a nonresident-owned investment corporation that is a resident of Canada to a beneficial owner that is a company (other than a partnership) resident in Luxembourg and that holds directly or indirectly at least 25% of the capital of the company paying the dividends. The 15% rate applies in all other cases.
- (ssss) Tax treaty negotiations with the government of the Hong Kong Special Administrative Region (SAR) of China began on 27 June 2011.
- (tttt) Negotiations to update the Canada-United Kingdom tax treaty began on 1 October 2011.

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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 impose 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 Cayman Islands unless the business is exempted (see Section D). If Caymanians or persons with Cayman

status do not own at least 60% of the issued share capital, hold 60% of board positions or otherwise control such a company, the company must also obtain a Local Companies (Control) Law License before it can do business in the Cayman Islands, unless the business is exempt from this requirement.

Incorporation fees range from a minimum of CI\$300 to a maximum of CI\$500. Annual fees range from a minimum of CI\$300 to a maximum of CI\$500. 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\$575 to a maximum of CI\$815. Annual fees range from a minimum of CI\$575 to a maximum of CI\$815. 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. An exempted company has certain advantages over an ordinary resident or nonresident company, including the availability of a Tax Exemption Certificate, which make the exempted company attractive to an offshore investor. A Tax Exemption Certificate provides that no law enacted in the Cayman Islands imposing any tax on income, profits, capital gains or appreciations will apply to the exempted company and that no such tax, estate duty or inheritance tax will be payable on or with respect to 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\$600 to a maximum of CI\$2,468. Annual fees range from a minimum of CI\$600 to a maximum of CI\$2,468. The minimum fee applies to companies with authorized capital of up to 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\$2,468, which applies to companies with authorized capital exceeding CI\$1,640,000.

An exempted company, through its memorandum and articles of association, may be established as a company limited by shares, a company limited by guarantee or a limited duration company (LDC). LDCs 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. If a company limited by shares has more than one share class, it may be established on the basis that some of its classes will have limited liability and some will have unlimited liability. LDCs must pay a fee of CI\$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 (CIS). The exchange rate of the U.S. dollar against the Cayman Islands dollar is fixed at US\$1.2 = CI\$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.

Companies that engage in certain types of business, such as banking and insurance, may be required to be licensed or registered under relevant laws. These laws may expressly eliminate the requirement that a company obtain a Trade or Business License or a Local Companies (Control) Law License.

The following are the annual license renewal fees payable by insurance companies and banks registered in the Cayman Islands.

<b>Insurance companies (CIS)</b>	
Class A (locally incorporated)	50,000
Class A (approved external insurer)	50,000
Class B (unrestricted)	8,500
Class B (restricted)	8,500
<b>Banking and trust companies (CIS)</b>	
Class A (unrestricted)	600,000
Class A (restricted)	136,500 or 250,000
Class B (unrestricted)	60,000
Class B (restricted)	37,000 or 40,000

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) and slightly higher fees may be payable on the application and grant of the license. Restricted trust companies must pay an annual fee of CI\$7,000 for a restricted trust license alone.

Mutual funds registered or licensed under the Mutual Funds Law must pay an annual license fee of CI\$3,000. Mutual fund administrators must pay the following license renewal fees:

- Restricted license: CI\$7,000
- Unrestricted license: CI\$20,000 or CI\$25,000 (depending on the number of funds under administration)

Company managers and corporate service providers licensed under the Companies Management Law must pay an annual license fee. For managers, the annual license fee ranges from CI\$750 to CI\$20,000 (depending on the number of companies under management), plus CI\$50 per managed company. For corporate service providers, the annual license fee ranges from CI\$500 to CI\$10,000, plus CI\$25 per company.

**Stamp duties.** Stamp duties are charged on transfers of real property, leases, mortgages and the execution of various other documents within the Cayman Islands. Transfer duty is payable on

transfers of shares in Cayman Islands companies that hold real property in the Cayman Islands, subject to certain exemptions.

## E. Tax treaties

As of October 2011, the Cayman Islands has entered into bilateral tax information arrangements with Aruba, Australia, Canada, China, Curaçao, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Iceland, India, Ireland, Japan, Mexico, the Netherlands, New Zealand, Norway, Portugal, Sint Maarten, South Africa, Sweden, the United Kingdom and the United States. It has also agreed to share information under the unilateral mechanism with Austria, Belgium, the Czech Republic, Germany, Japan, Luxembourg, the Slovak Republic, South Africa and Switzerland.

The Cayman Islands has also entered into a double tax treaty with the United Kingdom.

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## Chile

(Country code 56)

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**A. At a glance**

Corporate Income Tax Rate (%)	18.5 (a)
Capital Gains Tax Rate (%)	18.5/35 (a)(b)
Branch Tax Rate (%)	18.5 (a)
Withholding Tax (%)	
Dividends	35 (c)(d)
Interest	35 (c)(e)
Royalties from Patents, Trademarks, Formulas and Similar Items	30 (c)(f)
Technical Services	15 (g)
Other Fees and Compensation for Services Rendered Abroad	35 (c)
Branch Remittance Tax	35 (h)
Net Operating Losses (Years) (i)	
Carryback	Unlimited
Carryforward	Unlimited

(a) The corporate income tax rate of 17% is temporarily increased to 18.5% for 2012.

(b) See Section B.

(c) The tax applies to payments to nonresidents.

(d) The 35% tax is applied to the amount of the grossed-up dividend. A credit equal to the corporate tax paid is available.

(e) A reduced rate of 4% applies to certain interest payments including, but not limited to, interest paid on loans granted by foreign banks, insurance companies, financial institutions, and interest paid with respect to import operations.

(f) 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
- Use or exploitation of computer programs (software)

The reduced tax rate does not apply to payments made to related entities 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.
  - A shareholder or owner owns 10% or more of each company or participates in 10% or more of its revenue.
- (g) A 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 [e] above) or if the payments are being made to a company domiciled in a country included in the tax-haven list (see footnote [e] above), the withholding tax rate is 20%.
- (h) The 35% tax is applied to the grossed-up branch remittance. A credit is available for the corporate tax paid at the branch level.
- (i) 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 to accrued net income, with the exception of foreign-source income, which is computed on a cash basis.

**Rates of corporate tax.** The corporate income tax rate is 17%. However, the corporate income tax rate is temporarily increased to 18.5% for 2012. Income derived from activities developed in certain regions of Chile (the extreme north and south) is exempt from corporate income tax.

The corporate income tax serves as a credit against the tax applicable to the distribution of profits to nonresident partners or shareholders, or to resident individual partners or shareholders. Dividends or profit distributions between resident entities are not subject to tax.

**Mining tax.** A special tax on mining activities is imposed on individuals or legal entities that extract minerals subject to concession and sell these minerals in any state of production. The tax is imposed at progressive rates ranging from 0% to 14%, depending on the amount of the sales. The tax base is corporate income with certain adjustments.

Sales made by related mining entities are attributed to the taxpayer for purposes of determining the tax rate.

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 dividends distributed by the CHC's foreign subsidiaries or capital gains derived by the CHC from the disposal of such entities. To apply for the regime, the requirements contained in Article 41 D of the Income Tax Law must be met.

**Capital gains.** Capital gains derived by foreign investors are taxed at the regular 35% corporate rate if the capital gains relate to the disposal of a local entity other than a local corporation. Capital gains derived from the sale of shares of a Chilean corporation are subject to corporate tax as a sole tax if the following conditions are satisfied:

- The shares were owned for at least one year.
- The seller is not habitually engaged in the sale of shares.
- The parties to the transaction are not related.

If any of these conditions is not met, the 35% general rate applies to the amount of the capital gain.

Sales of shares of companies listed on the stock exchange are exempt from income tax under certain conditions. Under certain double tax treaties, the general rate may be reduced.

**Administration.** All accounting periods in Chile must end on 31 December. Income taxes must be paid during the month of April.

Provisional monthly payments on account of final annual income tax are due on the 12th day of each month.

**Foreign tax relief.** A foreign tax credit may be claimed up to a limit of 17% (18.5% for 2012) or 30% of the foreign-source income, depending on the nature of the income and the existence of a double tax treaty.

### C. Determination of trading income

**General.** Taxable income, determined in accordance with generally accepted accounting principles, includes all profits, with the exception of specified items that are not considered income for tax purposes.

In general, all necessary expenses for producing income, sustained 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) method and the weighted-average cost method are accepted by law. A corresponding monetary correction must be added to cost.

**Monetary correction.** The Income Tax Law contains monetary adjustment rules. These rules, known as monetary correction, require taxpayers to revalue certain assets and liabilities annually based on the changes reflected in the consumer price index (CPI) and in foreign-exchange rates. The different indices that are used to adjust assets and liabilities may result in taxable profits or losses.

The following adjustments must be made for monetary correction 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, rights and liabilities that are in a foreign currency or linked to price indices are adjusted based on the change in the

foreign-exchange rate or the relevant index. Investments in foreign entities are treated as foreign-currency denominated assets.

**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*). Accelerated depreciation may be applied to new or imported fixed assets and to imported fixed assets with normal useful lives of three years or more. The accelerated method allows 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. 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 regarding tangible personal property, as well as to payments for certain services. It also applies to certain real estate transactions. The general tax rate is 19%. VAT is imposed under a credit-debit system.

#### **E. Miscellaneous matters**

**Foreign-exchange controls.** The Central Bank of Chile must be informed of all transactions exceeding US\$10,000. Other annual information requirements are imposed.

**Transfer pricing.** Under the Income Tax Law, transactions between related entities must be carried out at arm's length. Otherwise, the tax authorities may challenge prices in such transactions for tax purposes. Acceptable transfer-pricing methods include the cost-plus, resale price and comparable uncontrolled price methods. Changes designed to conform local rules to Organization for Economic Cooperation and Development (OECD) standards are expected.

**Debt-to-equity rules.** In general, Chile does not impose debt-to-equity requirements. However, indebtedness of local companies resulting from loans or financing granted by related parties abroad and indebtedness secured with cash (or values representative of cash obligations) provided by related parties is limited to a 3:1 debt-to-equity ratio if the interest derived from those loans is subject to a 4% withholding tax rate (see footnote [d] to Section A). Interest payments in excess of this ratio are subject to an additional 31% tax that should be borne by the debtor. Interest payments abroad in excess of the ratio are subject to a total tax burden of 35%.

## F. Treaty withholding tax rates

The following table lists withholding tax rates under the Chilean treaties in force. The Argentina treaty is based on the Andean Pact model convention, while all of the other treaties are based on the OECD model convention.

	Dividends %	Interest (f) %	Patent and know-how royalties %
Argentina	35 (d)	4/35 (d)	30 (d)
Belgium	15 (a)	4/15 (b)	5/10 (c)
Brazil	10/15 (a)	4/15	15
Canada	10/15 (a)	4/15 (b)	15 (c)
Colombia	0/7 (a)	4/15	10 (c)
Croatia	5/15 (a)	4/15	5/10
Denmark	5/15 (a)	4/15 (b)	5/15 (c)
Ecuador	5/15 (a)	4/15 (b)	10/15 (c)
France	15 (a)	4/15	5/10
Ireland	5/15 (a)	4/15 (b)	5/10 (c)
Korea (South)	5/10 (a)	4/10/15 (b)	5/15 (c)
Malaysia	5/15 (a)	4/15 (b)	10
Mexico	5/10 (a)	4/15 (b)	15 (c)
New Zealand	15 (a)	4/10/15 (b)	10 (c)
Norway	5/15 (a)	4/15 (b)	5/15 (c)
Paraguay	10 (a)	4/10/15 (b)	15 (c)
Peru	10/15 (a)	4/15	15 (c)
Poland	5/15 (a)	4/15 (b)	5/15 (c)
Portugal	10/15 (a)	4/10/15 (b)	5/10
Spain	5/10 (a)	4/15 (b)	5/10 (c)
Sweden	5/10 (a)	4/15	5/10
Thailand	10 (a)	4/10/15	10/15
United Kingdom	5/15 (a)	3/15 (b)	5/10 (c)
Switzerland	15 (a)	4/15 (b)	5/10 (c)
Nontreaty countries	35 (e)	4/35 (f)	15/30 (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-favored nation (MFN) clause with respect to interest.
- (c) These treaties have a most favored 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. In general, interest and royalties are deemed to be sourced in the country of the payer.
- (e) For dividends paid from Chile, the withholding tax rate is 35% of the grossed-up dividend less a credit for the corporate tax paid (at the existing rate).
- (f) Under Chilean domestic law, a reduced 4% tax rate applies to the following interest payments:
- Interest paid on loans granted by foreign banks, financial institutions, insurance companies
  - Interest paid on bonds
  - Interest 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
  - 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 havens. The withholding tax rate for such payments is 30%.

Chile has signed tax treaties with Australia, the Russian Federation and the United States, which are awaiting ratification by the Chilean Congress.

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*This chapter refers only to the taxation of entities under the tax laws of Mainland China. The tax laws in the Special Administrative Regions (SARs) of Hong Kong and Macau and in Taiwan are separate sets of rules that are completely distinct from those in Mainland China. For information concerning the tax laws in Hong Kong, Macau and Taiwan, see the chapters concerning such jurisdictions on page 464, page 702 and page 1155, respectively.*

*Effective from 1 January 2008, a unified China 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 the Enterprise Income Tax Law Implementation Regulations.

**B. Taxes on corporate income and gains**

**Corporate income tax.** On 16 March 2007, China enacted the new China Enterprise Income Tax Law (the New Law), which took effect on 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 China 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. “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 China-source income only. However, if the nonresident company has an establishment in China, non-China source income effectively connected with the China establishment is also 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
- 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-China tax residents is 10%.

A reduced tax rate applies to the following enterprises, subject to the satisfaction of certain conditions:

- 20% for small and less-profitable enterprises
- 15% for High and New Technology Enterprises
- 15% for Technologically Advanced Service Companies (from 2009 to 2013)
- 15% for integrated circuit production enterprises
- 10% for key software enterprises and integrated circuit designing enterprises
- 15% for western region enterprises engaging in and deriving 70% of their total income from certain encouraged industries as stipulated in a new western region catalog (from 2011 to 2020)

**Tax incentives.** 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 that 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. A five-year tax holiday also applies to qualifying software enterprises, integrated circuit designing enterprises and integrated circuit production enterprises. For qualified integrated circuit production enterprises, the tax holiday can be extended to 10 years (exemption for the first five years and 50% reduction for the next five years) under certain conditions.

During the period from 2010 to 2012, certain specified industries in selected areas of Xinjiang, such as agriculture and forestry, irrigation, coal production and related industries, electricity, new energy, oil and gas, production of certain metals and related industries, petrochemical, pharmaceutical, transportation, modern logistics, environmental protection and resources conservation, can also benefit from a five-year tax holiday based on the statutory rate of 25%. A five-year exemption applies to qualifying enterprises located in the Kashi and Huoerguosi Special Economic Development Zones of Xinjiang,

Other tax incentives are available to enterprises engaged in industries, projects, or activities encouraged by national policies. The incentives granted to these encouraged industries, projects and activities typically include the following:

- Income from agriculture, forestry, animal husbandry and fishery projects is eligible for a full tax exemption or 50% reduction of tax, depending on the type of projects.
- Income from infrastructure projects is eligible for a full tax exemption for the first three years and 50% reduction of tax for the next three years.

- Income from environmental protection or water or energy conservation projects is eligible for a full tax exemption for the first three years and 50% reduction of tax for the following three years.
- Income from technology transfer is eligible for a tax exemption for the first RMB 5 million and a 50% reduction for the amount over that threshold.
- 150% of qualified costs incurred for the research and development of new technologies and products can be tax deductible.
- 200% of qualified wages for disabled people can be tax deductible.
- Venture capital companies investing in the equity of unlisted small or medium-sized High and New Technology Companies can use 70% of its investment cost to offset the taxable income for the year in which the holding period reaches two years.
- Income derived from recycling business is eligible for a 10% reduction in calculating taxable income.
- 10% of the cost incurred in purchasing environmental protection, water and energy saving or production safety equipment can be credited against income tax payable for the year of the purchase.

**Capital gains and losses.** In general, capital gains and losses are treated in the same manner as other taxable income and losses, and are taxed at the normal income tax rate of 25%. However, China-source capital gains derived by nonresident enterprises, such as gains from the disposal of an 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 China and a set of annual reporting forms for related-party transactions, 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 taxable 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 adjustments made under antiavoidance provisions, such as adjustments with respect to transfer pricing, thin capitalization and controlled-foreign corporations (see Section E), an interest charge is imposed on a daily basis, beginning on 1 June of the year following the tax year to which the tax underpayment is related and ending on the day the tax underpayment is settled. This charge is based on the renminbi yuan (RMB) loan base rate published by the People's Bank of China (PBOC) plus 5%. If

related-party transaction annual reporting forms and other prescribed documentation can be provided, the interest charge may be reduced to an amount based only on the RMB loan-based rate published by the PBOC.

**Dividends.** Profits of FIEs distributed as dividends are subject to withholding tax at a rate of 10% (this rate may be reduced under a tax treaty or arrangement) when remitted from China. The investor must obtain preapproval from the tax authorities responsible for administering the relevant treaty reliefs. 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 income taxes paid, or indirectly borne, by China resident enterprises, but the credit is generally limited to the amount of China corporate income tax payable on the foreign-source portion of an enterprise's worldwide taxable income. A nonresident enterprise with an establishment or place of business (generally referred to as a permanent establishment [PE]) in China that derives foreign-source income effectively connected to the PE can also claim a tax credit for income taxes paid in foreign jurisdictions, but the credit is limited to China corporate income tax payable on such income. Excess foreign tax credits may be carried forward for a period of five years. The tax credit limit mentioned above must be calculated on a country-by-country basis. The tax credit limit for each country is calculated by apportioning the total income tax on worldwide taxable income through the application of an apportionment ratio of the taxable income sourced in the relevant country to worldwide taxable income.

### C. Determination of trading income

**General.** Taxable income is defined as total revenue less the following:

- Nontaxable income
- Tax-exempt income
- Allowable deductions
- 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, employee education expenses, commissions and handling fees, supplementary pensions and supplementary medical insurance. 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
- Dividends and returns on equity investments
- Income tax payments including penalties and surcharges
- Donations not fulfilling prescribed requirements
- Provisions not yet approved
- Other expenses not related to production or business operations

For an establishment in China 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.
- 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.

Cost may be determined on a first-in, first-out (FIFO), weighted average, or specific identification basis. The last-in, first-out (LIFO) basis is not acceptable for tax purposes. The method chosen must be applied consistently.

**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 assets 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
Aircraft, trains, vessels, machinery, equipment and other production plants	10
Appliances, tools, furniture and other assets related to production and business operations	5
Means of transport other than aircraft, trains and vessels	4
Electronic equipment	3
Productive biological assets in the nature of trees	10
Productive biological assets in the nature of livestock	3
Acquired software (subject to approval)	2

Accelerated depreciation is allowed with respect to certain fixed assets subject to rapid technological obsolescence and fixed assets exposed to constant shock and erosion.

Intangible assets, including technical know-how, patents and trademarks, are amortized over the contractual term or over a period of no less than 10 years if a time period is not specified. Self-developed goodwill cannot 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 of enterprises are not allowed, and all companies must file separate tax returns, unless specifically approved by government authorities. Tax resident enterprises in China must adopt combined 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 combined 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 are 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, such as cigarettes, gasoline, alcoholic beverages, jewelry, cosmetics, motor vehicles, motor vehicle tires, golf balls and equipment, luxury watches and yachts	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	5 to 20

Nature of tax	Rate (%)
Transfers of intangible and immovable properties; 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
City construction tax (CCT); based on indirect taxes (including VAT, consumption tax and business tax) actually paid	
Taxpayers located in urban areas	7
Taxpayers located in county or township areas	3
Taxpayers located in rural areas	1
Education surcharge (ES); based on indirect taxes (including VAT, consumption tax and business tax) actually paid	3
Local education surcharge (LES); based on indirect taxes (including VAT, consumption tax and business tax) actually paid	2

## E. Miscellaneous matters

**Foreign-exchange controls.** In general, 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.

Recently, China has been relaxing its foreign-exchange controls in phases by permitting settlement in renminbi yuans (RMB) for cross-border trading transactions, including cross-border trades in commodities, services and other current account items, in certain cities and provinces and then extending the RMB settlement to both inbound and outbound investments on a nationwide basis.

*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. In general, 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. In general, 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. In general, 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.* In general, 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. To enjoy treaty benefits with respect to royalties, the investor must obtain pre-approval from the in-charge tax authorities. 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 China, 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 of up to US\$3 million, the capital contribution must equal or exceed 70% of the total investment.
- For investment projects of over US\$3 million but not exceeding US\$10 million, the minimum capital requirement is 50% of the total investment, but not less than US\$2,100,000.
- For investment projects of over US\$10 million but not exceeding US\$30 million, the minimum capital requirement is 40% of the total investment, but not less than US\$5 million.
- 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. Subject to certain exceptions, in general, the debt-to-equity ratio for financial institutions is 5:1 and the ratio for non-financial institutions is 2:1. The interest expense on funds loaned by a related party that exceed the maximum debt calculated under the debt-to-equity ratio is not deductible for tax purposes.

In addition, the deduction of expenses on a loan from an investor may be limited if the investor has not yet paid up its committed investment capital. The nondeductible interest expense is calculated by apportioning the total interest expenses based on the ratio of the outstanding capital commitment to the total loan balance.

**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)
- Other methods that are consistent with the arm's length principle

Enterprises must disclose related-party transactions in Related-Party Transaction Forms, which should be submitted to the in-

charge tax bureau together with the annual tax return by the due date for the annual return. The following related-party information must be disclosed in the forms:

- Related-party relationships
- Sales and purchases
- Services
- Transfers of intangible assets and fixed assets
- Financing
- Outbound investments and payments

Enterprises with aggregate related-party transactions exceeding one of the following thresholds must prepare contemporaneous documentation on an entity level unless their transactions are covered by an Advance Pricing Agreement (APA) or unless they meet the “domestic transaction” exemption:

- RMB 200 million of related-party purchase or sale transactions
- RMB 40 million of other kinds of transactions such as intangibles, services and interest from financing transactions

The contemporaneous documentation must be completed by 31 May of the year following the year in which the related-party transactions took place and be provided to the tax authorities within 20 days on request.

The New Law recognizes the concept of cost-sharing arrangements for group procurement and group marketing activities. Other types of service cost sharing are not currently entertained by the tax authorities. Entities that have executed a cost-sharing agreement must prepare and preserve contemporaneous documentation regardless of the related-party transactions thresholds.

Taxpayers may apply for APAs in China.

**Antiavoidance rules.** The general antiavoidance rules apply to transactions if the transactions may be considered to have been undertaken or arranged primarily for other than bona fide purposes and if the sole and dominant purpose for a company to enter into such transactions was the obtaining of tax benefits.

**Controlled foreign corporations.** The New Law introduces controlled foreign corporation (CFC) rules, which are designed to counter income deferral strategies. A resident company that holds an interest in a CFC incorporated in a jurisdiction with an effective tax rate of lower than 12.5% may be taxed on its share of profits of the CFC, regardless of whether a dividend has been declared. A non-resident company is considered to be controlled by a China resident company if either of the following conditions is satisfied:

- The China resident company directly or indirectly holds 10% or more of the voting shares in the nonresident company and jointly holds an interest of 50% or more in the nonresident company.
- The China resident company exercises effective control over the nonresident company by means of shares, capital, business operations, purchases and sales or other mechanisms.

China has issued a white list showing jurisdictions that are not subject to CFC rules, including Australia, Canada, France, Germany, India, Italy, Japan, New Zealand, Norway, South Africa, the United Kingdom and the United States. The CFC rules do not apply if one of the following conditions is satisfied:

- The CFC is located in one of the jurisdictions in the white list.

- The CFC carries out substantial and positive business activities.
- The CFC reports an annual profit of RMB 5 million or less.

## F. Treaty withholding tax rates

The following table provides Chinese withholding tax rates for dividends, interest and royalties paid from Mainland China to residents of various treaty countries and arrangement jurisdictions (Hong Kong and Macau SARs). The rates reflect the lower of the treaty rate and the rate under domestic law. The following table is for general guidance only.

	Dividends %	Interest %	Royalties %
Albania	10	10	10
Algeria	5/10 (a)	7	10
Armenia	5/10 (a)	10	10
Australia	10	10	10
Austria	7/10 (d)	7/10 (g)	6/10 (h)
Azerbaijan	10	10	10
Bahrain	5	10	10
Bangladesh	10	10	10
Barbados	5/10 (a)	10	10
Belarus	10	10	10
Belgium (p)	10	10	6/10 (h)
Brazil	10	10	10
Brunei Darussalam	5	10	10
Bulgaria	10	10	7/10 (j)
Canada	10	10	10
Croatia	5	10	10
Cuba	5/10 (a)	7.5	5
Cyprus	10	10	10
Czechoslovakia (m)	10	10	10
Czech Republic (l)	5/10 (a)	7.5	10
Denmark	10	10	7/10 (i)
Egypt	8	10	8
Estonia	5/10 (a)	10	10
Finland	5/10 (a)	10	7/10 (i)
France	10	10	6/10 (h)
Georgia	0/5/10 (e)	10	5
Germany	10	10	7/10 (i)
Greece	5/10 (a)	10	10
Hong Kong SAR	5/10 (a)	7	7
Hungary	10	10	10
Iceland	5/10 (a)	10	7/10 (i)
India	10	10	10
Indonesia	10	10	10
Ireland	5/10 (c)	10	6/10 (h)
Iran	10	10	10
Israel	10	7/10 (g)	7/10 (i)
Italy	10	10	7/10 (i)
Jamaica	5	7.5	10
Japan	10	10	10
Kazakhstan	10	10	10
Korea (South)	5/10 (a)	10	10
Kuwait	5	5	10
Kyrgyzstan	10	10	10
Laos	5	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Latvia (t)	5/10 (a)	10	10
Lithuania	5/10 (a)	10	10
Luxembourg	5/10 (a)	10	6/10 (h)
Macau SAR	5/10 (a)	7	7
Macedonia	5	10	10
Malaysia	10	10	10
Malta (q)	5/10 (a)	10	7/10 (i)
Mauritius	5	10	10
Mexico	5	10	10
Moldova	5/10 (a)	10	10
Mongolia	5	10	10
Morocco	10	10	10
Nepal	10	10	10
Netherlands	10	10	6/10 (h)
New Zealand	10	10	10
Nigeria	7.5	7.5	7.5
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	7/10 (i)
Portugal	10	10	10
Qatar	10	10	10
Romania	10	10	7
Russian Federation	10	10	10
Saudi Arabia	5	10	10
Seychelles	5	10	10
Singapore	5/10 (a)	7/10 (g)	6/10 (h)
Slovenia	5	10	10
South Africa	5	10	7/10 (i)
Spain	10	10	6/10 (h)
Sri Lanka	10	10	10
Sudan	5	10	10
Sweden	5/10 (a)	10	7/10 (i)
Switzerland	10	10	6/10 (h)
Syria (s)	5/10 (a)	10	10
Tajikistan	5/10 (a)	8	8
Thailand	10	10	10
Trinidad and Tobago	5/10 (a)	10	10
Tunisia	8	10	5/10 (k)
Turkey	10	10	10
Turkmenistan	5/10 (a)	10	10
Ukraine	5/10 (a)	10	10
United Arab Emirates	7	7	10
United Kingdom (r)	10	10	7/10 (i)
United States	10	10	7/10 (i)
Uzbekistan	10	10	10
Venezuela	5/10 (b)	5/10 (f)	10
Vietnam	10	10	10
Yugoslavia (o)	5	10	10
Yugoslavia (former) (n)	10	10	10
Zambia (u)	5	10	5
Nontreaty countries	10	10	10

- (a) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
- (b) 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 company paying the dividends. The 10% rate applies to other dividends.
- (c) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the voting shares of the company paying the dividends. The 10% rate applies to other dividends.
- (d) The 7% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the voting shares of the company paying the dividends. The 10% rate applies to other dividends.
- (e) The 0% 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 company paying the dividends and that has invested more than €2 million in the capital of the company paying the dividends. The 5% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 10% of the capital of the company paying the dividends and that has invested more than €100,000 in the capital of the company paying the dividends. The 10% rate applies to other dividends.
- (f) The 5% rate applies to interest paid to banks. The 10% rate applies to other interest payments.
- (g) The 7% rate applies to interest paid to banks or financial institutions. The 10% rate applies to other interest payments.
- (h) Payments for the use of industrial, commercial or scientific equipment are taxed on the basis of 60% of the gross payments. Consequently, the effective rate for such payments is 6%.
- (i) Payments for the use of industrial, commercial or scientific equipment are taxed on the basis of 70% of the gross payments. Consequently, the effective rate for such payments is 7%.
- (j) The 7% rate applies to royalties paid for the use of, or the right to use, industrial, commercial and scientific equipment. The 10% rate applies to other royalties.
- (k) The 5% rate applies to royalties paid for technical or economic studies or for technical assistance. 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, films or tapes for radio or television broadcasting, patents, trademarks, designs or models, plans, or secret formulas or processes, or for the use of, or the right to use, industrial, commercial or scientific experience.
- (l) The China-Czech Republic double tax treaty was ratified on 4 May 2011 and is effective for taxes withheld at source for income paid or credited on or after 1 January 2012. For all other taxes, the treaty is effective for income in taxable years beginning on or after 1 January 2012.
- (m) China is honoring the Czechoslovakia treaty with respect to the Slovak Republic until a new treaty is signed.
- (n) After the partition of former Yugoslavia, China is honoring the double tax treaty with the former Yugoslavia with respect to Bosnia-Herzegovina.
- (o) China entered into a treaty with the Federal Republic of Yugoslavia. It has been indicated that China considers Serbia to have inherited the Yugoslavia treaty and that China is also honoring the treaty with respect to Montenegro. However, it is suggested that taxpayers check with the relevant tax authorities before relying on this treaty.
- (p) On 7 October 2009, China signed a new tax treaty with Belgium, which has not yet been ratified.
- (q) On 23 October 2010, China signed a new tax treaty with Malta, which was ratified on 25 August 2011. The treaty is effective for income derived on or after 1 January 2012.
- (r) On 27 June 2011, China signed a new tax treaty with the United Kingdom, which has not yet been ratified.
- (s) On 31 October 2010, China signed a new tax treaty with Syria, which was ratified on 1 September 2011. The treaty is effective for income derived on or after 1 January 2012.
- (t) On 24 August 2011, China signed a new protocol with Latvia, which has not yet been ratified.
- (u) On 26 July 2010, China signed a new tax treaty with Zambia, which was ratified on 30 June 2011. The treaty is effective for income derived in tax years beginning on or after 1 January 2012.

China signed a tax treaty with Ethiopia on 14 May 2009, but this treaty has not yet been ratified.

# Colombia

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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 (b)
Interest	0/14/33 (c)
Royalties	
Software	26.4
Other	33
Technical Services, Technical Assistance and Consulting Services	10 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- (a) Reduced and gradually increasing income tax rates exist (for details, see Section B).
- (b) Dividends paid to nonresidents are not subject to tax 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, dividends paid to nonresidents are subject to withholding tax at the regular corporate income tax rate of 33%. 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. Otherwise, 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%. A 20% withholding tax is imposed on dividends paid to residents if the taxpayer is required to file an income tax return; otherwise, the withholding tax rate is 33%.
- (c) In general, effective from 1 January 2011, interest paid or accrued by Colombian residents to foreign entities on loans with a term equaling or exceeding one year are subject to 14% withholding tax; otherwise, the applicable rate is 33%. Interest paid by Colombian financial institutions to qualified foreign financial entities and interest paid by Colombian residents to foreign entities with respect to international trade operations are deemed to be foreign-source income and are accordingly exempt from withholding tax. Certain qualified loans executed before 31 December 2010 do not generate Colombian-source income. As a result, interest on such loans is exempt from withholding tax.
- (d) This withholding tax applies to consulting services, technical services and technical assistance services rendered in Colombia or from abroad by nonresidents that are not domiciled in Colombia.

- (e) Beginning with the 2007 fiscal year, tax losses may be carried forward without limitation. Restrictions apply to the transfer of losses with respect to spin-offs or mergers (for details, see Section C).

## B. Taxes on corporate income and gains

**Corporate income tax.** Domestic corporations are taxed on worldwide income. Domestic corporations are corporations organized under Colombian law. Branches of foreign corporations are taxed on Colombian-source income only.

**Corporate income tax rates.** The general tax rate for domestic corporations and branches of foreign corporations is 33%.

A special reduced income tax rate of 15% applies to legal entities qualified as Industrial Users or Service Users in a free-trade zone. Commercial Users in a free-trade zone are subject to the general income tax rate.

Reduced and gradually increasing income tax rates are available for small businesses (as defined by Law 1429, December 2010) beginning their activities on or after 1 January 2011. Zero percent of the regular corporate income tax rate applies for the first two years. The rate increases by 25% of the regular corporate income tax rate for the third through the fifth years, and the regular corporate income tax rate of 33% applies from the sixth year.

Certain tax credits are available (see *Foreign tax relief*).

**Capital gains.** The following gains are considered capital gains, which are subject to the regular corporate income tax rate of 33%:

- Gains on the transfer of fixed assets owned for more than two years
- Gains resulting from the receipt of liquidation proceeds of corporations in excess of capital contributed if the corporation existed for at least two years

**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 payment of taxes due. Tax payments are made in five installments between February and October for Larger Taxpayers (large corporations, according to 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. For taxpayers filing returns for the first time, the advance payment corresponds to the 25% of the income tax payable for the first year.

Interest on the late payment 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 levied on the amount of tax assessed in the corresponding tax return at a rate of 5% or 10% for each month or a fraction thereof. The penalty for late filing cannot exceed 100% or 200% of the difference of the tax to be paid or the balance in favor, depending on the timing of the filing. The penalty for amending a return may be 10% or 20% of the difference between the amount shown on the original tax return and the correct amount, depending on the timing of the amendment.

**Dividends.** Dividends paid to nonresidents are not subject to tax if the dividends are paid out of profits that were taxed at the corporate level (temporal differences can affect this calculation). If the dividends were not taxed at the corporate level, dividends paid to nonresidents are subject to withholding tax at the regular corporate income tax rate of 33%. 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. Otherwise, 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%. A 20% withholding tax is imposed on dividends paid to residents out of profits not taxed at the corporate level if the taxpayer is required to file an income tax return; otherwise, the withholding tax rate is 33%.

Any excess paid over the par value for shares (a share premium) is taxable to a company in the year in which the share premium is distributed as a dividend.

**Foreign tax relief.** For domestic corporations and foreign individuals with five or more years of residency, 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.

An indirect tax credit is also granted for foreign taxes paid on income at the level of the foreign company that is distributing corresponding 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 company to the amount of distributed dividends. Effective from 2011, if the foreign company distributing the dividends has received dividends from other companies domiciled in the same or other jurisdictions, the tax credit equals the amount resulting from the application of the income tax rate of the foreign company to the amount of the dividends received by the Colombian taxpayer. The sum of the tax credit and indirect tax credit may not exceed the income tax payable in Colombia on such dividends.

To be entitled to the indirect tax credit, the domestic taxpayer must prove the effective payment of the corresponding tax in each relevant jurisdiction.

The tax credit may be claimed in the tax year in which the foreign tax is paid or in any of the following four years.

### **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. In general, if no withholding tax applies, the expenses are allowed as deductions, up to a maximum of 15% of the taxpayer's net income before taking into account all costs and expenses abroad not subject to Colombian withholding tax. Costs or 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, and the 15% limitation mentioned above does not apply.

Branches 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
- Payments for the use or acquisition of intangible property

Interest and other financial expenses resulting from liabilities owed to foreign-related companies are generally not deductible. Payments made to foreign-related parties that comply with the transfer-pricing rules (see Section E) may be deductible even if no income tax withholding is required. However, the 15% limitation described above applies to such payments.

Overhead expenses are deductible for Colombian tax purposes 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, 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:

- Hotel services (new and remodeled hotels)
- Software and medical patents developed in Colombia
- Fluvial transportation services
- Energy generated from wind and biomass sources, and agriculture disposal

The assets used in the above activities are not included in the base for determining presumptive income (see *Presumptive income*).

**Presumptive income.** Under the Colombian tax law, the tax base is the higher of actual taxable income (see *General*) 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, and certain taxpayers are not required to calculate presumptive income.

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, 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 50 tax units (for 2012, a tax unit equals COP \$26,049 or approximately US\$13.35) may be fully depreciated in the year of acquisition.

The following are the general categories of useful lives established by the tax law:

- Buildings, including pipelines: 20 years
- Machinery and equipment: 10 years
- 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 may be used for both tax and accounting purposes. Differences in the methods may generate future taxable dividends for shareholders if the expense for tax purposes is greater than the expense for 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, except for certain intangibles, such as software, for which a shorter period may be allowed, if properly justified.

Effective from 2002, 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 claimed as deductions in the year in which this is determined or in the following two years.

**Capital allowance for the acquisition of fixed assets.** Until the 2010 fiscal year, companies could deduct 30% of the value of acquired or produced “productive tangible fixed assets,” including leasing agreements with an irrevocable purchase option (in addition to the depreciation of 100% of the cost). “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.
- They can be depreciated or amortized for tax purposes.

Assets considered for this benefit may be depreciated using only the straight-line method of depreciation.

Users of free-trade zones applying the special 15% income tax rate (see Section B) cannot claim this special deduction.

Companies that executed legal stability agreements with the Colombian government that stabilized the above capital allowance may continue to apply it during the term of the agreement. In addition, companies that filed a petition to execute a legal stability agreement before 1 November 2010 that requested stabilization of the above capital allowance may stabilize it for a period not exceeding three years (beginning with the year in which the legal stability agreement is executed) if the premium to be paid to the government as consideration is calculated over the total investment project. (see Section E).

**Relief for tax losses.** Effective from the 2007 tax year, tax losses may be carried forward with no time limitation. Tax losses incurred between 1 January 2003 and 31 December 2006 may be carried forward for eight years only and only 25% of such tax losses is available for offset each tax year.

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 spin-offs of companies. Tax losses generated do not affect the entity's presumptive income for the respective tax year.

The special treatment of tax losses in mergers and spin-offs applies only if the economic activity of the companies involved remains the same after the merger or spin-off occurs.

**Inflation adjustment.** Annual inflation adjustments for income tax purposes were eliminated, effective from 2007. Instead, an optional tax readjustment of fixed assets may be applied. This readjustment is calculated by applying the percentage certified by the government for the adjustment of the tax unit (see *Depreciation*). The readjustment affects the tax basis for the transfer of fixed assets, presumptive income and the determination of taxable net equity. Although the inflation adjustments were eliminated, the accumulated inflation adjustments can be depreciated.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate
Value-added tax; imposed, unless expressly excluded by law, on sales of movable tangible assets, on imports of movable tangible assets and on most services	
General rate	16%
Basic products, such as coffee and wheat	10%
Mobile telephone services (cellular and other kinds of wireless communication services)	20%
Luxury automobiles	35%
Nonluxury automobiles, trucks, motorcycles and similar items	16% to 25%

Nature of tax	Rate
Stamp tax; general rate (except for certain banking and public documents)	0%
Industry and commerce tax, on annual or bimonthly net revenue; rates vary depending on the company's activity and municipality; tax effectively paid during the year is 100% deductible for income tax purposes Bogotá	0.414% to 1.38%
Municipalities other than Bogotá	0.2% to 1%
Signs and Posters Tax; imposed on enterprises with advertisements in public places; tax rate applied to the industry and commerce tax due; tax effectively paid during the year is 100% deductible for income tax purposes	15%
Tax on Visible Advertisement Hoardings; imposed on each advertisement on hoardings or billboards with a size equal to or larger than 8 square meters (86,111 square feet); for the 2012 tax year, a minimum wage equals COP \$566,700 (approximately US\$292.11)	5 minimum wages
Debit tax (financial transactions tax); imposed on the amount of each financial transaction, such as disposals of funds from savings accounts, current bank accounts and deposit accounts, which involve cash withdrawals by checks and through other mechanisms, and on the amount of certain accounting entries; tax effectively paid during the year is 25% deductible for income tax purposes	0.4%
Social security contributions and payroll taxes Pension (foreigners who remain in Colombia in accordance with an employment agreement may voluntarily enroll in the pensions system); contributions calculated on the monthly ordinary salary of the employee; if the monthly salary is more than 25 times the minimum wage, contributions to the social security regime are calculated on a maximum base of 25 minimum wages (COP \$14,167,500 [approximately US\$7,302.8] per month); for employees earning integral (all-inclusive) salary, 70% of the salary is the base, but the maximum limit described above applies	
Employer	12%
Employee	4%
Health; contribution calculated on the monthly ordinary salary of the employee; subject to the same maximum limitation and integral salary rules as the pension contributions	
Employer	8.5%
Employee	4%
Solidarity Fund; payable by employer on the monthly ordinary salary of the employee;	

Nature of tax	Rate
contribution required only for employees who earn a monthly salary greater than 4 minimum wages (COP \$2,266,800 [approximately US\$1,168.4]); 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 (COP \$9,607,200 [US\$4,673])	1%
Employees earning monthly between 16 and 17 minimum wages (COP \$9,607,200 to COP \$9,633,900 [US\$4,673 to US\$4,965])	1.2%
Employees earning between 17 and 18 minimum wages (COP \$9,633,900 to COP \$10,200,600 [US\$4,965 to US\$5,258])	1.4%
Employees earning between 18 and 19 minimum wages (COP \$10,200,600 to COP \$10,767,300 [US\$5,258 to US\$5,550])	1.6%
Employees earning between 19 and 20 minimum wages (COP \$10,767,300 to COP \$11,334,000 [US\$5,550 to US\$5,842])	1.8%
Employees earning between 20 and 25 minimum wages (COP \$11,334,000 to COP \$14,167,500 [US\$5,842 to US\$7,302])	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%
Payroll taxes to National Learning Service, Colombian Family Welfare Institute and Family Compensation Fund; payable by employer on the monthly ordinary salary earned by the employee; no ceiling applies; subject to same integral salary rules as pension contributions; reduced and progressive rates apply to small businesses	9%
Custom duty, on Cost, Insurance, Freight (CIF) value; general rates	0% to 15%
Real estate tax; municipal tax imposed on the ownership of land or immovable property; tax rate is applied to the commercial value of the property; rate set by the municipality and varies according to the location and use of the property; the tax effectively paid during the tax year is 100% deductible for income tax purposes; 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 of goods), 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).

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). Effective from October 2011, Colombian residents may receive foreign loans from non-Colombian residents without any restriction. Before October 2011, only financial institutions recognized as such by the Colombian Central Bank could lend money to Colombian residents.

**Controlled foreign companies.** Colombia does not have special measures for controlled foreign companies (CFCs).

**Debt-to-equity rules.** Colombia does not have any special thin-capitalization measures.

**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 rulings of the Constitutional Court, the OECD guidelines may not be directly referred to for purposes of interpretation of the Colombian transfer-pricing rules and are considered auxiliary criteria for interpretation. Significant aspects of the transfer-pricing system in Colombia include the following:

- The rules do not cover local operations between related companies established in Colombia.
- Parties that have gross equity higher than 100,000 tax units as of the last day of the tax year or gross revenues for the year in excess of 61,000 tax units must prepare contemporaneous documentation and file transfer-pricing information returns. In addition, information regarding the comparables must be sent to the tax authorities in electronic form.
- Penalties are imposed for not meeting filing requirements, submitting erroneous or incomplete reports or failing to meet other requirements.

Guidelines containing a list of tax havens and covering other matters have not yet been issued.

**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, on which the decision to invest is based. In consideration for such guarantee, the investor pays a premium equal to 1% of the amount of the investments. The rate of the contribution is reduced to 0.5% if the project is in the preoperational stage. The calculation of the premium will change. The government will calculate the premium based on a consideration in general terms of the economic effect on tax laws subject to stabilization.

In general, income tax is covered by the contract. Sales 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 measures, such as corporate laws, private laws and 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. Relevant investments are those made after the execution of the contract. Additional requirements are provided by the law.

## F. Tax treaties

Colombia has entered into a multilateral tax treaty with Bolivia, Ecuador and Peru, which follows the source criteria. In addition, Colombia has double tax treaties in effect with Chile, Spain and Switzerland, which are based on the OECD model convention.

Colombia has entered into tax treaties covering certain international air transportation services with several countries, including Argentina, Chile, France, Germany, Italy, Panama, the United States and Venezuela.

On 18 November 2008, Colombia signed a double tax treaty with Canada. On 13 August 2009, Colombia signed a double tax treaty with Mexico. On 27 July 2010, Colombia signed a double tax treaty with Korea (South). On 30 August 2010, Colombia signed a double tax treaty with Portugal. On 13 May 2011, Colombia signed a double tax treaty with India. All of these treaties are based also on the OECD model convention. The treaty with Canada is expected to be effective from 2013.

The following table presents the withholding tax rates for dividends, interest and royalties under the Chile, Spain and Switzerland treaties.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Chile	0/7/33 (a)	5/15	10
Spain	0/33 (a)	0/10	10
Switzerland	0/15	0/10	10
Nontreaty countries (b)	0/33	0/14/33	26.4/33 (c)

- (a) Dividends that are not taxed at a corporate level are subject to the tax rate of 33% at the shareholder level. However, the 33% rate may be reduced if the dividends are exempt from income tax at the corporate level and are reinvested for a three-year term.
- (b) For details regarding these rates, see Section A.
- (c) The 26.4% rate applies to software.

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## A. At a glance

Corporate Income Tax Rate (%)	40 (a)
Capital Gains Tax Rate (%)	40
Branch Tax Rate (%)	40
Withholding Tax (%) (b)	
Dividends	20 (b)
Interest	20 (c)
Royalties	20 (d)
Net Operating Losses (Years)	
Carryback	None
Carryforward	5

- (a) The corporate income tax rate is 30% for mining companies.  
 (b) The rate of dividend withholding tax for mining companies is 10%.  
 (c) Interest on loans abroad to mining companies is not subject to withholding tax.  
 (d) The net amount of royalties is subject to tax. For this purpose, net royalties equal gross royalties minus professional expenses, or 30% of gross royalties.

## B. Taxes on corporate income and gains

**Corporate income tax.** Congolese companies are taxed on the territoriality principle. As a result, companies carrying on a trade or business outside the Democratic Republic of Congo (DRC) are not taxed in the DRC on the related profits. Congolese companies are those registered in the DRC, regardless of the nationality of the shareholders or where the company is managed and controlled. Foreign companies engaged in activities in the DRC are subject to Congolese corporate tax on Congolese-source profits only.

A company is considered to have a business in DRC if it satisfies either of the following conditions:

- It possesses a material facility (for example, head office, branch office, factory, plant, workshop, or buying and selling counter) or any other fixed or permanent business of a productive nature in the DRC.

- In the absence of a material facility, it carries out a professional activity under its corporate name for at least six months, provided that this activity cannot be considered the providing of technical assistance to a DRC company.

**Rates of corporate tax.** The regular corporate income tax rate is 40%.

The minimum tax payable equals 1% of the annual turnover. It cannot be less than US\$2,500.

The corporate income tax rate is 30% for companies holding mining or quarry titles.

The amount paid by a DRC company for technical assistance is subject to the tax on turnover at a rate of 30%.

**Capital gains.** Increases resulting from capital gains and depreciation that are realized and either realized or expressed in the accounts or inventories are included in profits and are subject to tax at a rate of 40%.

Increases resulting from unrealized capital gains that are expressed in the accounts or inventories and that are not treated as profits are immunized. This immunization applies only if the taxpayer holds a regular accounting and if it fulfills its declarative obligations.

The capital gain remains incorporated in the property until the property is alienated. If the property is alienated, the capital gain is treated in accordance with Article 35 of Law No. 69-009 of 10 February 1969.

Unrealized capital gains are not taken into account, except in companies limited by shares, to determine the incoming or outgoing partners' shares.

Capital gains are not subject to depreciation or mandatory distribution or withdrawal. They are not used in determining the distribution of the profits or the calculation of the annual allocation of the legal reserve, remunerations or assignments.

A social credit (income paid in case of the retirement of a partner or the restructuring of a company) is not distributed even if a partner retires or if a merger of companies (through the creation of a new company or by the absorption of another company) takes place.

Capital gains remain in a special account distinct from the accounts of reserves or capital. If any of the conditions mentioned above is not satisfied, capital gains are considered to be profits derived during the fiscal year in which the conditions are not satisfied.

Increases resulting from realized capital gains on buildings, tools, materials and movable assets (whether or not resulting from rent payments), as well as on participations and portfolios, are taxable to the extent that the sales price exceeds the acquisition price or cost. A deduction is made from the amount of the depreciation that has already been claimed for tax purposes.

**Administration.** The fiscal year extends from 1 January to 31 December. Tax returns must be filed before 1 April.

Corporate tax must be paid in two installments before 1 August and 1 December. Each installment must be equal to 40% of the previous year's tax. The balance of tax due must be paid by the following 31 March.

A penalty of 10% per month is assessed for late payment of tax. Tax is fixed automatically if a tax return is not filed.

**Dividends.** Dividends paid are subject to a 20% withholding tax.

**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.

### C. Determination of trading income

**General.** Taxable income is based on financial statements prepared in accordance with principles set by the Congolese General Accounting Plan (PCGC). The net amount of income is taxed. This amount equals gross income minus business expenses incurred during the tax year to acquire and retain the income. Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Head office, remuneration or management fees for services paid to nonresidents that are not justified
- Head office overhead or remuneration for certain services (studies and technical assistance) paid to nonresidents
- Expenditure of a personal nature, such as maintenance of household, appraisal fees, holidays and other expenses not necessary for the profession
- Corporate income tax, as well as real tax (tax on movable assets, tax on vehicles or tax on mining concessions), to the extent that the real tax does not constitute an operating expense
- All judicial or administrative fines, and fees and charges relating to breaches by income beneficiaries
- Certain specific charges, gifts, subsidies and penalties
- Directors' fees allocated under the Corporations Act to members of the General Council
- Expenditures on leased property, including depreciation of the property
- Provisions for losses, expenses or depreciation of assets, excluding provisions for the recovery of mineral deposits and provisions for the recovery of bank capital
- Commissions and brokerage fees if it cannot be proven that the tax on turnover (see Section D) has been paid for these items
- Most liberalities (payments that do not produce a compensatory benefit, such as excessive remuneration paid to a director)

**Inventories.** Inventories are normally valued at their historical cost or acquisition cost.

**Provisions.** In determining accounting profit, companies must implement certain provisions, such as a provision for risk of loss or for certain expenses. These provisions are not deductible for tax purposes. However, provisions for recovery of bank capital and provisions for the recovery of the mineral deposit are deductible for tax purposes.

**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.

<b>Asset</b>	<b>Rate (%)</b>
Buildings	2 to 5
Office equipment	10
Motor vehicles	20 to 25
Plant and machinery	10

Companies can also opt for a regressive method for tax depreciation with an annual rate of two to three times the straight-line rate.

**Relief for tax losses.** On the specific request of a taxpayer, tax losses incurred in a tax year may be deducted from profits in the following five tax years. Losses attributable to depreciation may be carried forward indefinitely.

**Groups of companies.** The DRC does not have a fiscal integration system 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>
Tax on turnover	
Sales	15
Services	18
Technical assistance	30
Payroll taxes	
Social Security National Institute (Institut national de sécurité social, or INSS) contributions; payable monthly	
Employers	5/9
Province of Katanga	9
Rest of country	5
Employees	3.5
National Institute for Professional Preparation (Institut national de préparation professionnelle, or INPP); payable monthly by employers	1 to 3

#### **E. Miscellaneous matters**

**Foreign-exchange controls.** The currency in the DRC is the Congolese franc (CDF). The exchange rate is variable.

In the DRC, the Central Bank of Congo regulates foreign-exchange controls. It also supervises the regulation on the transfer of currency. Money held in cash on entering into and exiting from the DRC is not subject to restrictions if it does not exceed the equivalent of US\$10,000. An exchange royalty of 0.2% is levied on payments to or from abroad.

**Transfer pricing.** The Congolese tax law contains the transfer-pricing measures described below.

Amounts paid by a DRC company to a person or a foreign entity with which it is linked (through direct participation in its capital or through the holdings by one or more other companies in the same group) for compensation for services rendered may be deducted only if the following conditions are satisfied:

- The reality of the service is clearly demonstrated.
- The service in question cannot be performed in the DRC.
- The amount of compensation corresponds to the actual value of the service.

Any payment considered to be transfer of income is adjusted by the tax administration.

## F. Treaty withholding tax rates

The DRC has not entered into any tax treaties.

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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	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

- The proposed 2012 Finance Act provides for a rate of 34%. The minimum tax is 1% of turnover (unless an exemption applies). The corporate income tax rate is 25% for agricultural companies.
- In certain circumstances, the tax is deferred or reduced (see Section B).
- This tax also applies to directors' fees, nondeductible expenses and adjustments of profits following a tax examination. For directors' fees, the rate is 22%.
- Interest paid to a foreign bank is not subject to withholding tax.
- 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 35%. The proposed 2012 Finance Act provides for a rate of 34%.

The minimum tax payable is 1% of the annual turnover and cannot be less than XAF 1 million (or XAF 500,000 if turnover is less than XAF 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 25% 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. 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.
- 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 5.25% 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)
- 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 XAF 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 portion of salary up to XAF 1,500,000	5
On portion of salary exceeding XAF 1,500,000	4
Social security contributions, on annual salaries; paid by	
Employer	
Family allowance contribution	10.035
Work accident insurance	2.25
Old-age pension	8
National Fund of Housing	1
National Office of Employment and Manpower (Onemo)	0.5
Employee	
Old-age pension	4

### E. Miscellaneous matters

**Foreign-exchange controls.** The Congolese currency is the CFA franc BEAC. The fixed exchange rate for the CFA franc BEAC is XAF 655,957 = €1.

Exchange-control regulations exist in Congo for financial transfers outside the franc CFA zone (XAF 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
- 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.

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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 comply with requirements to report income or 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 ₡91,573,000 (approximately US\$176,224) are subject to an income tax rate of 10% on income up to ₡45,525,000 (approximately US\$87,609) of gross income. Companies with annual gross income between ₡45,525,000 and ₡91,573,000 are subject to an income tax rate of 20%.

Companies operating under the Free Trade Zone Regime that are located in the Great Extended Metropolitan Area (GEMA) benefit from an income tax exemption of 100% for the first eight years and of 50% for the next four years. Companies located outside the GEMA benefit from an income tax exemption of 100% for the first 12 years and of 50% for the next six years. The Ministry of National Planning and Economic Policy specifies which areas are considered part of the GEMA.

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 Costa Rica. Based on the above action and to comply with Costa Rica's commitments as a member of the World Trade Organization, on 22 January 2010, the executive branch of the Costa Rican government published Law 8794 which amends and adds certain sections to the Free Trade Zone Regime Law No. 7210. The new law creates a new category of companies that can apply for the Free Trade Zone Regime. This category is for companies that produce or process goods, regardless of whether the goods are for exportation. Companies in this new category are subject to income tax at reduced rates (0%, 5% or 15%) for a specified number of years depending on whether the company is located inside or outside the GEMA or depending on the amount of the investment. For companies in any of the other categories listed in the law, the benefits remain the same until 31 December 2015.

**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.

Companies defined by tax authorities as National Large Taxpayers or Large Territorial Companies must file audited financial statements. Effective from the 2011 fiscal year, the audited financial statements must be filed within six months following the end of the fiscal year of the company.

**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 comply with requirements to report income or 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.

<b>Activity</b>	<b>Rate (%)</b>
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.

Nature of tax	Rate (%)
Sales tax	13
Real estate transfer tax	1.5
Vehicle transfer tax	2.5
Customs duties	
Agricultural products; average rate	12.72
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	26.17
Employee	9.17
Municipal taxes (varies by municipality)	Various
Solidarity Tax for the Strengthening of Housing Programs; (Solidarity Tax) contained in Law No. 8683; effective from 1 October 2009 through 1 October 2019; purpose of the tax is to finance public housing programs; tax applicable to residential property that is used habitually or occasionally or for recreational purposes, that the taxpayer owns or has the right to use and that is located in Costa Rica; taxpayers are subject to the tax if the value of the infrastructure (permanent structures, such as houses, swimming pools and parking lots) exceeds ¢106 million (approximately, US\$203,987); the value of the infrastructure must be determined every 1 January in accordance with the parameters established by the tax authorities; if the taxpayer is subject to the tax (that is, meets value threshold for the infrastructure) the tax base is calculated as the total value of the infrastructure (not just the excess of ¢106 million) plus the value of the land as of 1 January, based on a specific zoning model determined by tax authorities; hotel businesses may be subject to the tax depending on their operating model and the	

<b>Nature of tax</b>	<b>Rate (%)</b>
type of infrastructure; the tax is paid annually and is due on 15 January of the current tax year (for example, for a fiscal year-end of 31 December 2012, the tax is due by 15 January 2012); Solidarity Tax is independent from the other real estate taxes and is not deductible for income tax purposes; the tax rates are progressive	0.25 to 0.55

### **E. Foreign-exchange controls**

The currency in Costa Rica is the colon (¢). As of 28 December 2011, the exchange rate of the colon against the U.S. dollar was ¢519.62 = US\$1.

No restrictions are imposed on foreign-trade operations or foreign-currency transactions.

### **F. Tax treaties**

Costa Rica has entered to an income tax treaty with Spain. Costa Rica has not entered into an income tax treaty with any other country.

## **Côte D'Ivoire (Ivory Coast)**

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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	10/12/18 (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 6.75%, 8.25%, 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) This withholding tax applies to payments by resident companies for services rendered by nonresidents who do not maintain a professional office in Côte d'Ivoire. For premiums paid to nonresident reinsurance companies, the rate is 12.5%.
- (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.** The regular corporate income tax rate is 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 XOF 2 million or more than XOF 30 million. 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 12% if certain conditions are satisfied.

**Administration.** The financial year is from 1 January to 31 December. Corporate financial statements and corporate results must be filed by 30 April of the year following the financial 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 financial year.

Late payments are subject to a penalty of 5% for the first month, plus 0.5% for each additional month or part of a month.

Late submissions of financial statements are subject to a penalty of XOF 1 million plus XOF 100,000 for each month or part of a month of the delay.

If the lateness of a submission exceeds three months, the penalty is XOF 2 million plus XOF 200,000 for each month or part of a month of the delay.

**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 25% 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 (regime of holding companies and subsidiaries). 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%.

**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
- Penalties

Services fees and royalties paid by Ivorian companies to resident and nonresident parent 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.
- 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 Côte d'Ivoire, amounts paid to non-resident 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 or 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.

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	33.33
Other specified vehicles and engines	20 to 25
Computers	20 to 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 following table 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	5.656
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 XOF 1,647,315; paid by	
Employer	6.6
Employee	5.4
(For 2013, the employer and employee rates will be increased to 7.7% and 6.3%, respectively.)	
Family allowances, on monthly salaries up to XOF 70,000; paid by employer	5.75
Industrial injuries, on monthly salaries up to XOF 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 (Communauté Economique de l'Afrique de l'Ouest, or CEAO), which are Burkina Faso, Mali, Mauritania, Niger and Senegal.

The country also signed a multilateral tax treaty in the framework of the Common African and Mauritian Organization (Organisation Commune Africaine et Mauricienne, or OCAM). This treaty was also signed by Benin, Burkina Faso, Cameroon, Central African

Republic, Chad, Congo, Congo (Democratic Republic of the), Gabon, Madagascar, Mauritius, Niger, Rwanda, Senegal and Togo.

The two international organizations mentioned above have been dissolved. However, the Ivorian tax administration considers the above multilateral tax treaties to be still applicable, provided that reciprocity exists.

Côte d'Ivoire has signed a new treaty with the countries of the West African Economic and Monetary Union (WAEMU). This tax treaty has applied for some tax items since 2009. It is wholly applicable, effective from 1 January 2010. The members of WAEMU are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Belgium	12	16	10
Benin	10	15	15
Burkina Faso	10	15	15
Cameroon	12	18	0
Canada	12	15	10
Central African Republic	12	18	0
Chad	12	18	0
Congo (Democratic Republic of the)	12	18	0
Congo (Republic of the)	12	18	0
France	12	15	10
Gabon	12	18	0
Germany	12	15	10
Italy	12	15	10
Madagascar	12	18	0
Mali	10	15	15
Mauritania	12	18	0
Mauritius	12	18	0
Niger	10	15	15
Norway	12	16	10
Rwanda	12	18	0
Senegal	10	15	15
Switzerland	12	15	10
Togo	10	15	15
United Kingdom	12	15	10
WAEMU countries	10	15	15
Nontreaty countries	10/12/18 (a)	18 (b)	20

(a) See Section B.

(b) See footnote (d) to Section A.

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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
Service fees paid to persons in blacklisted low-tax countries	20
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 in accordance with special legislation regulating incentives. For example, the Investment Promotion Act provides incentives for investments in new business activities and new workplaces.

**Capital gains and losses.** Capital gains and losses from the sale of assets are considered regular taxable income and tax-deductible expenses, respectively. Specific rules apply to unrealized gains and losses on certain types of assets. Depending on the type of asset, such gains or losses may be not taxable or not tax deductible, and may be recognized for tax purposes in the period of the realization of the asset.

**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 of 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 (Croatian Financial Reporting Standards [CFRS]/International Financial Reporting Standards [IFRS]), adjusted for certain items that increase or decrease the tax base.

The following items decrease the tax base:

- Revenues from dividends and profit shares
- Unrealized profits from value adjustments of shares if they were previously taxed
- Revenues from collected written-off receivables that were taxed in previous periods
- Depreciation expenses carried forward from previous periods
- Tax incentives in accordance with special laws

The following items increase the tax base:

- Depreciation expenses exceeding the maximum allowable amounts (excess may be carried forward).
- Penalty interest paid between related parties.
- Privileges and other benefits granted to individuals 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.
- Unrealized losses from value adjustments of shares, 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, vacation homes and vessels.
- 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.
- Inventory shortages above the amount prescribed by the Croatian Chamber of Economy, if the shortages are not subject to personal income tax.
- Donations in cash or in kind exceeding 2% of the preceding year's 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. The donations also include financing of healthcare expenses (surgery, and purchases of medicines or orthopedic devices) for individuals who are not covered by primary, additional or private health insurance.
- Expenses identified in the course of a tax audit, including value-added tax (VAT), personal income tax, city tax and obligatory contributions incurred with respect to hidden profit payments, including payments of private costs of shareholders, company members and individuals and persons related to these individuals.
- Other expenses not incurred for the purpose of earning profit.

The expenses mentioned above, except privileges and other benefits granted to individuals and legal persons to execute certain actions in favor of the company and expenses identified in a tax audit, do not increase the tax base if they are subject to personal income tax.

**Inventories.** Inventories are valued in accordance with Croatian Financial Reporting Standards (CFRS) or International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS). In general, inventories are valued at the lower of cost or net realizable 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.

Losses from value adjustments of inventories are recognized as tax-deductible expenses at the time of disposal of the inventories.

Specific rules deal with allowable limits of inventory shortages.

**Provisions.** The following provisions are deductible for tax purposes:

- Provisions for severance payments
- 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
- Provisions in insurance companies, up to the obligatory amount prescribed by the law governing the insurance

- Provisions for the unused vacation in accordance with accounting principles

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 taxable 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.
- 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 maximum annual depreciation rates prescribed by the Corporate Tax Act.

<b>Asset</b>	<b>Rate (%)</b>
Buildings and ships over 1,000 gross registered tons	10
Primary herd and personal cars	40
Intangible assets, equipment, vehicles (except personal cars), and machinery	50
Computers, computer hardware and software, mobile telephones and computer network accessories	100
Other assets	20

The deduction for tax depreciation cannot exceed the expense for accounting depreciation. If maximum allowable tax depreciation exceeds accounting depreciation, the accounting depreciation prevails for tax purposes. If accounting depreciation exceeds maximum allowable tax depreciation, the excess may be deducted in future periods.

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.

Depreciation of assets that are not used in the performance of ordinary business activities is not deductible for tax purposes.

If the accounting records of a taxpayer include vessels, airplanes, apartments or resort houses and if the taxpayer uses these items in its regular business activities, the depreciation of such assets may be claimed as deductible expenses for tax purposes if the following conditions are met:

- The taxpayer is registered for the activity of renting such assets.
- The revenue realized from the use of the vessels and airplanes is at least 7% of the purchased value of the vessels or airplanes.

- The revenue from the use of apartments and resort houses is at least 5% of the purchase value of the apartments or resort houses.

**Relief for losses.** Tax losses may be carried forward for five years, but they may not be carried back.

The legal successor may lose the right to a loss carryforward after a legal change (merger or spin-off) and/or change in ownership of the company of more than 50% if one of the following circumstances exists:

- The legal predecessor did not perform its business activity for the two tax periods before the occurrence of the legal change and/or change in ownership.
- Within two tax periods after the occurrence of the legal change and/or change in ownership, the business activity of the company substantially changes.

**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.

Nature of tax	Rate (%)
Value-added tax	0/10/23
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 lies with the employer	
Up to HRK 3,600 per month	12
From HRK 3,600 to HRK 10,800 per month	25
In excess of HRK 10,800 per month	40
Municipal surcharge; varies among cities; the rate for Zagreb (the capital city) 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 and short-term loans to nonresident companies, acquire real estate abroad and engage in certain other specified transactions. Such transactions are allowed if they are reported to the Croatian National Bank.

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).

**Transfer pricing.** Croatia has transfer-pricing rules that apply to transactions between Croatian residents and nonresidents. Under these rules, the tax authorities may adjust the taxable income of Croatian taxpayers derived from transactions with foreign related companies if they deem the prices and agreed conditions to be different than arm's length prices and conditions. In such circumstances, taxable income is increased (or expenses decreased) by the difference between prices stated in the financial statements and arm's length prices. These rules also apply to transactions between two Croatian residents if one of the related parties has special tax status (pays corporate income tax at reduced rates) or has a tax-loss carryforward.

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
- 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 received from foreign shareholders owning 25% or more of the shares, capital or voting rights of the borrower or on loans guaranteed by such shareholders is not deductible if the loan balance exceeds four times the shareholders' share in the equity of the borrower.

**Prepayments of dividends.** If the dividends or profit shares are prepaid to an individual during a tax year and if the realized profit at the end of a tax year is insufficient to cover such prepayment or the prepayment is not settled by the time of submission of the tax return, the prepayment is considered to be income subject to personal income tax. The taxpayer must maintain documentary evidence of dividend prepayments and submit it with the tax return.

## F. Tax treaties

Croatia has signed double tax treaties on avoidance of double taxation with many countries (see the withholding rate table below).

Croatia has signed or initialed tax treaties with Egypt, Indonesia, Morocco, Oman and Qatar but these treaties have not yet become effective.

Croatia has adopted the double tax treaties entered into by the former Yugoslavia with Finland, Norway, Sweden and the United Kingdom.

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
Armenia	10	5
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	5	10
Estonia	10	10
Finland	0	10
France	0	0
Germany	0	0
Greece	10	10
Hungary	0	0
Iran	5	5
Ireland	0	10
Israel	5/10	5
Italy	10	5
Jordan	10	10
Korea (South)	5	0
Kuwait	0	10
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
Slovak Republic	10	10
Slovenia	5	5
South Africa	0	5
Spain	8	8
Sweden	0	0
Switzerland	5	0
Syria	10	12
Turkey	10	10
Ukraine	10	10
United Kingdom	10	10
Yugoslavia*	10	10
Nontreaty countries	15	15

\* This treaty applies to Serbia.

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*On 10 October 2010, the country Netherlands Antilles, which consisted of five island territories in the Caribbean Sea (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), was dissolved. On dissolution of the Netherlands Antilles, the islands of Bonaire, Sint Eustatius and Saba (BES-Islands) became part of the Netherlands as extraordinary overseas municipalities. Curaçao and Sint Maarten have both become autonomous countries within the Kingdom of the Netherlands. The former Netherlands Antilles tax laws remain applicable to Curaçao, with the understanding that references in the laws to “the Netherlands Antilles” should now be read “Curaçao”. A tax reform in Curaçao is effective from 1 January 2012. This is the first step in a more extensive tax reform planned for upcoming years. The following chapter provides information on taxation in Curaçao only. Chapters on the BES-Islands and Sint Maarten appear on pages 143 and 1050, respectively.*

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## A. At a glance

Corporate Income Tax Rate (%)	27.5 (a)
Capital Gains Tax Rate (%)	27.5 (a)
Branch Tax Rate (%)	27.5 (a)
Withholding Tax (%)	0

## Net Operating Losses (Years)

Carryback	0
Carryforward	10 (b)

- (a) The corporate income tax rate of Curaçao is expected to be reduced in steps to approximately 20% in 2014.
- (b) Losses incurred by certain companies during their first four years of business may be carried forward indefinitely. Companies under the Curaçao offshore tax regime can carry forward tax losses five years.

## 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 former Netherlands Antilles or current Curaçao laws, even if their management is located abroad, as well as companies incorporated under foreign law, but effectively managed and controlled in Curaçao. 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 Curaçao income items, such as profits earned through a permanent establishment and income related to real estate property in Curaçao, including interest derived from a mortgage on such real estate property.

**Tax rates.** Resident and nonresident companies, including branches of foreign companies, are taxed at a standard effective rate of 27.5%. However, this rate does not apply to companies qualifying for tax holidays, E-zone companies, offshore companies or tax-exempt companies. The offshore tax regime (tax rates of 2.4% to 3%) has been abolished, subject to extensive grandfathering rules.

Withholding taxes are not imposed on remittances of profits by branches or subsidiaries to their foreign head offices.

**Tax incentives.** Reduced tax rates and other tax incentives (tax holidays) are granted to new business enterprises engaged in certain activities, including 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 Curaçao. In principle, the activities of these companies must be focused on trading with, or providing services to, companies or persons located outside Curaçao. Profits derived by E-zone companies from sales of goods or services to companies or individuals located in Curaçao may not exceed 25% of the total annual turnover. In general, E-zone companies are taxed at a rate of 2%. However, for profits derived from sales of goods or services to companies or individuals located in Curaçao (up to a maximum of 25% of total turnover), the standard corporate income tax rate of 27.5% 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 Curaçao companies to E-zone companies
- Products delivered by E-zone companies, or services rendered to individuals or companies that are not resident in Curaçao or to companies that are located in the E-zone

*Offshore companies.* The offshore regime was abolished in 2001. However, under grandfathering rules special incentives are available for qualifying offshore companies in existence before 1 January 2002. Offshore companies are resident companies 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, royalty, financing, holding, portfolio investment, mutual fund, real estate and service activities) is taxed at corporate income tax rates of 2.4% to 3%. For offshore trading and service companies, the income is taxed at rates of 24% to 30%. Capital gains on securities, loans, intellectual property and immovable property are exempt from corporate income tax. In addition, advance tax rulings can be obtained for determining the offshore tax status and method of calculating the tax base of offshore companies. Profits derived from real estate located outside Curaçao are exempt from corporate income tax. The offshore tax rates are guaranteed through 2019.

*Tax-exempt companies.* Tax-exempt companies (TECs) are exempt from Curaçao corporate income tax. Only private limited liability companies incorporated under former Netherlands Antilles or current Curaçao laws may qualify as TECs. TECs may engage only in investing in debt instruments, securities, deposits and licensing of intellectual property and industrial rights. 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 or for benefits under any other double tax treaty of the former Netherlands Antilles or Curaçao. However, exchange-of-information provisions apply to TECs. If a TEC loses its tax-exempt status, it is treated as a regularly taxed company subject to tax on its worldwide income, and it receives a tax-free step-up in basis.

*Taxed private foundations and trusts.* The 2011 tax reform of the Curaçao corporate income tax legislation introduced the option for private foundations and trusts to be subject to corporate income tax at a reduced effective corporate income tax rate of 10%. In principle, Curaçao private foundations and trusts are fully exempt from corporate income tax if they do not conduct an enterprise. The option to be subject to corporate income tax results in the taxation of the private foundation/trust for a period of at least three full fiscal years. After this three-year period, the private foundation can request to discontinue being subject to the corporate income tax.

*Transparent companies.* Curaçao public limited liability companies or private limited liability companies can opt for fiscal transparency for Curaçao corporate income tax and individual income tax purposes. To qualify as a transparent company, a written request must be filed and certain conditions must be satisfied. If fiscal transparency is elected, the limited liability company is treated for tax purposes as a partnership; that is, only the partners can be taxed in Curaçao on Curaçao sources of income. If a transparent company loses its tax-exempt status, it is treated as a regularly taxed company subject to tax on its worldwide income.

*Ruling policy.* Curaçao has an extensive advance tax ruling practice. 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
- Informal capital (or cost-plus) rulings for intercompany trading activities

These rulings are usually valid for a five-year period, with the option for extension every five years.

*Other incentives.* Curaçao also offers other incentives for specific activities, such as the international use of aircraft and ships and the insurance of risks outside Curaçao.

**Capital gains.** Under the current corporate income tax rules, in general, except for offshore companies, no distinction is made between the taxation of capital gains and the taxation of other income. All income is taxed at the applicable corporate tax rate (27.5%). Taxation of capital gains on qualifying share interests (participation exemption) is discussed in Section C.

**Administration.** The standard tax year is the calendar year. However, on request and under certain conditions, a company may use a different 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 a 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 of the provisional tax return. An extension of time to file the return and pay the tax is not 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 final 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 the time of the filing of the final return. An extension for filing the final tax return on a later date can be obtained.

To ensure compliance with the rules described above, 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 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%.

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 for offshore companies.

**Dividends.** Curaçao does not levy dividend withholding tax on dividend distributions.

**Foreign tax relief.** A 100% exemption from Curaçao corporate income tax is available for foreign business profits. For this purpose, foreign profits are profits earned in another country through a permanent establishment or a permanent representative in the

other country, or profits earned from immovable property located in a foreign country, including the rights related to the property that is part of the business activities of the taxpayer but is deemed to be part of the foreign business. If foreign profits are derived from a business that can be considered a low-taxed portfolio investment, a reduced exemption of 63% applies.

### C. Determination of taxable income

**General.** Taxable profit must be calculated in accordance with “sound business practices.”

All expenses incurred with respect to conducting 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 considered to be a nondeductible profit distribution (dividend). 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, courses and seminars, is deductible.

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. Under thin-capitalization rules, the deductibility of interest accrued or paid directly or indirectly to affiliated TECs may be restricted.

**Participation exemption.** In principle, a 100% participation exemption applies for all qualifying share interests held by Curaçao corporate taxpayers.

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 US\$500,000.

For dividend income, additional requirements are imposed for a participation to be considered a qualifying participation. To apply the 100% exemption on dividends, either of the following conditions must be met:

- The qualifying participation is subject to a (nominal) profit tax rate of 10% (subject-to-tax clause).
- Dividends, interest or royalties received from other sources than the enterprise of the participation do not account for 50% or more of the gross income of the participation (nonportfolio-investment clause).

These conditions may be met on a consolidated basis. If neither of the above conditions is met, a lower participation exemption of 63% applies to dividends. The subject-to-tax clause and the nonportfolio-investment clause do not apply to the 100% participation exemption on capital gains and income received from participations that exclusively or almost exclusively hold immovable property.

Expenses that are connected with the participation, including financing expenses, are not deductible if the income is 100% tax-exempt.

**Tax depreciation.** In general, assets are depreciated using the straight-line method, with the residual value taken into consideration. The following are some of the applicable rates.

Asset	Rate (%)	Residual value (%)
Buildings	2 to 2.5	10
Office equipment	10 to 50	Nil
Motor vehicles	10 to 33	15
Plant and machinery	10	10

The rates listed above provide a general overview of the depreciation rates. The actual depreciation rate depends on the type of asset used by the company.

Fixed company assets acquired by companies operating in Curaçao may qualify for accelerated depreciation at a one-time maximum annual rate of 33 $\frac{1}{3}$ % of the acquisition costs of the assets. Fixed company assets are assets used for a business process for at least one business cycle, unless these assets are intended to be processed or sold.

An investment allowance deduction of 8% (12% for new buildings or restorations of buildings) is granted for acquisitions of fixed assets by companies operating in Curaçao. The allowance is deducted from taxable income in the year of the investment and in the following year. The investment allowance deduction is recaptured in the year of sale and the subsequent year if the asset is sold within 6 years (15 years for buildings) of the date of the investment.

**Groups of companies.** On written request, Curaçao resident companies may form a fiscal unity (tax-consolidated group) for corporate income tax purposes. To qualify for a fiscal unity, the parent company must own at least 99% of the shares in the subsidiary. A fiscal unity may include, among others, a Dutch company that has its place of effective management in Curaçao. The whole group is taxed for corporate income tax purposes as if it were one company and, as a result, the subsidiaries in the fiscal unity are no longer individually subject to corporate income tax.

Advantages for corporate income tax purposes of fiscal unity treatment include the following:

- Losses of one subsidiary may be offset against profits of other members of the fiscal unity.
- Reorganizations, including movements of assets with hidden reserves from one company to another, have no direct tax consequences for corporate income tax purposes.
- Intercompany profits may be fully deferred.

The fiscal unity does not apply for sales tax purposes.

**Relief for losses.** Losses in a financial year may be carried forward for 10 years. No carryback is available. 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.

Nature of tax	Rate (%)
Sales tax in Curaçao; a general consumption tax on goods delivered, imports, and services rendered by entrepreneurs (legal entities or individuals) in Curaçao and services rendered in Curaçao by foreign entrepreneurs; primary life goods and certain imports are exempt	
Standard rate	6
Insurance	7
Real estate transfer tax	4

## E. Miscellaneous matters

**Foreign-exchange controls.** The currency in Curaçao is the Antillean guilder (ANG).

For foreign investors that obtain a foreign-exchange license from the Curaçao Central Bank, no restrictions are imposed on the movement of funds into and out of Curaçao and Sint Maarten. In general, the Curaçao Central Bank automatically grants foreign-exchange licenses for remittances abroad. Residents are subject to several foreign-exchange regulations imposed by the Curaçao Central Bank. However, residents may be granted nonresident status for foreign-exchange control purposes. Some reporting requirements exist for statistical purposes.

**Transfer pricing.** In general, intercompany charges should be determined on an arm's length basis.

**Voluntary disclosure arrangement.** The 2011 tax reform introduced a voluntary disclosure arrangement. This arrangement, which lasts for one year, provides for a reduced personal income tax, corporate income tax and/or gift and inheritance tax rate. No penalties are imposed on taxpayers who voluntarily disclose income.

## 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 (consisting of Aruba, Curaçao, the Netherlands, and Sint Maarten). Under a measure in the Tax Regulation for the Kingdom of the Netherlands, dividend distributions by a qualifying Dutch subsidiary to its Curaçao parent company are effectively subject to an 8.3% Dutch dividend withholding tax. A new bilateral tax regulation for the Kingdom between Curaçao and the Netherlands was announced December 2011. This regulation is expected to become effective on 1 January 2013. It contains, among other measures, a 0% Dutch dividend withholding tax rate on distributions to active companies in Curaçao. Curaçao does not impose withholding tax on payments from Curaçao to residents of other countries.

The former Netherlands Antilles has entered into tax information exchange agreements with Antigua, Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Italy, Mexico, New Zealand, Saint Lucia, Spain, Sweden and the United States. As a result of the constitutional reform of the Kingdom of the Netherlands, the tax treaties entered into by the Netherlands

Antilles became automatically applicable to the surviving countries, which are the legal successors of the Netherlands Antilles. Negotiations are ongoing with the United Kingdom.

The Curaçao government is negotiating several double tax treaties and additional tax information exchange agreements.

Under the latest published Organization for Economic Cooperation and Development (OECD) list, Curaçao qualifies as a white-listed jurisdiction.

The government of the former Netherlands Antilles entered into bilateral agreements with the European Union (EU) member states with respect to the application of the EU Council Directive on taxation of savings income. The Curaçao (former Netherlands Antilles) law determining the implementation of the directive took effect in July 2006.

The Kingdom of the Netherlands has entered into many bilateral investment treaties that also apply to Curaçao.

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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 17% 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 at an annual rate of 5%, beginning on the due date.

**Dividends.** Dividends paid are not subject to withholding tax.

A 17% 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 17% 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 directly or indirectly 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 €15,600) in the course of business	0/5/8/15
Payroll taxes	
Social insurance contribution, levied on each employee's gross salary, up to €4,342 a month; payable by both employer and employee	6.8
Special Cohesion Fund, levied on gross salary; payable by employer	2
Human Resource Development Authority and Redundancy Fund, levied on gross salary, up to €4,342 a month; paid by employer	1.7
Leave Fund, levied on gross salary, up to €4,342 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)	15

### 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	5/10/15 (a)	5	5
Belgium	10/15 (d)	10	0
Bulgaria	5/10 (h)	7	10
Canada	15	0/15 (b)	0/10 (r)
China	10	10	10
Czech Republic	0/5 (f)	0	10
Czechoslovakia (l)	10	0/10 (b)	0/5 (c)
Denmark	10/15 (d)	0/10 (e)	0
Egypt	15	15	10
France	10/15 (f)	0/10 (e)	0/5 (g)
Germany	10/15 (m)	0/10 (b)	0/5 (s)
Greece	25	10	0/5 (g)
Hungary	5/15 (h)	0/10 (b)	0
India	10/15 (f)	0/10 (b)	15
Ireland	0	0	0/5 (g)
Italy	0/15	10	0
Kuwait	10	0/10 (b)	0/5 (c)
Lebanon	5	5	0
Malta	0/15	0/10 (b)	10
Mauritius	0	0	0
Moldova	5/10 (h)	5	5

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Norway	0/5	0	0
Poland	10	0/10 (b)	5
Qatar	0	0	5
Romania	10	0/10 (b)	0/5 (c)
Russian Federation	5/10 (k)	0	0
San Marino	0	0	0
Seychelles	0	0	5
Singapore	0	7/10 (o)	10
South Africa	0	0	0
Sweden	5/15 (h)	0/10 (b)	0
Syria	0/15 (d)	0/10 (b)	10/15 (n)
Thailand	10	0/10/15 (p)	5/10/15 (q)
USSR (j)	0	0	0
United Kingdom	0	10	0/5 (g)
United States	0/5/15	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 lower rate applies to 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 €100,000 in the share capital of the payer.
- (l) The Czechoslovakia treaty applies to the Slovak Republic.
- (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 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 10% for royalties paid for literary, artistic or scientific works, or for films or television. The rate is 15% for payments for the use of industrial, commercial or scientific equipment.
- (o) The rate is 7% for interest paid to banks and financial institutions.
- (p) The 0% rate applies to interest paid to the government. The 10% rate applies to interest paid to banks. The 15% rate applies in other cases.
- (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 (%)	19 (a)
Capital Gains Tax Rate (%)	0/19 (b)
Branch Tax Rate (%)	19
Withholding Tax (%) (c)	
Dividends	0/15 (d)
Interest	0/15 (e)(f)
Royalties	0/15 (f)(g)
Rental Income from Leases	15 (f)(h)

## Net Operating Losses (Years)

Carryback	0
Carryforward	5

- (a) Investment funds, mutual funds and pension funds are subject to tax at a rate of 5%. Effective from 1 January 2011, foreign joint investment funds located in European Union (EU)/European Economic Area (EEA) countries (except for Liechtenstein) are subject to tax at a rate of 5% if certain additional conditions are met.
- (b) Capital gains derived by Czech or EU/EEA parent companies (except for Liechtenstein companies) on transfers of shares in their subsidiaries are exempt from tax if certain conditions are satisfied (see Section B).
- (c) The rates may be reduced by applicable tax treaties.
- (d) Dividends are subject to a final withholding tax at a rate of 15%. Under the principles of the EU Parent-Subsidiary Directive (No. 90/435/EEC), dividends paid by Czech companies to parent companies (as defined in the directive) located in EU/European Free Trade Association (EFTA) countries (except for Liechtenstein) 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.
- (e) Interest payments are subject to withholding tax at a rate of 15%. Under the principles of the EU Directive 2003/49/EC, interest paid by Czech companies to related companies (as defined in the directive) located in EU/EFTA countries (except for Liechtenstein) is exempt from withholding tax if certain additional conditions are met.
- (f) For each type of income, EU/EEA tax residents may choose to include the income in their tax return and have it taxed at the standard corporate income tax rate after deduction of associated expenses (while claiming a credit for the withholding tax paid against tax liability stated in the tax return) or they may choose to treat the withholding tax as a final tax on the income.
- (g) This withholding tax applies to nonresidents. Under the principles of EU Directive 2003/49/EC, royalties paid by Czech companies to companies located in EU/EFTA countries (except for Liechtenstein) are exempt from tax, effective from 1 January 2011, if certain additional conditions are met.
- (h) A 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. Some rental payments may be considered royalties for Czech tax purposes.

## 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 2011 and future years, the standard corporate income tax rate for Czech enterprises and branches of foreign enterprises is 19%. Investment funds, mutual funds and pension funds are subject to tax at a rate of 5%. Foreign joint investment funds located in EU/EEA countries (except for Liechtenstein) are subject to tax at a rate of 5% if certain additional conditions are met.

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 training and retraining of employees
- Discounts on the purchase price of land

The total value of the incentives can be as much as 40% of the investment, depending on the location and timing of the investment. No incentives will be provided in Prague for 2009 through 2013. The cap (including 0% for Prague) is increased by 10% for mid-sized enterprises and 20% for small enterprises. The cap applies to the total of tax relief, job-creation grants and discounts. Retraining grants are provided on top of this cap.

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) and the assets must be acquired from unrelated third parties for arm's length prices.
- The proposed production must meet Czech environmental standards.
- All requirements must be met within three years after the date of granting the incentives. On request, the Ministry of Industry and Trade may extend this deadline by a maximum of two years in justifiable cases.
- 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 tax-effective bad debt provisions and using all available tax loss carryforwards, 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 in the Czech Republic.
- They may not terminate their activities, merge or declare bankruptcy.

- They may not increase their tax base through related-party transactions that are not at arm's length.

Specific conditions apply to job-creation, retraining and property-related grants.

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.

No tax incentives are currently being provided to centralized services operations in the Czech Republic (technology centers and strategy-services centers). However, EU funding may be obtained for these and several other activities.

A proposed amendment to the Investment Incentives Act has been introduced to modify the existing conditions (for example, to extend the corporate income tax relief utilization period from 5 years to 10 years), and introduce tax incentives for technology/strategy-services centers and strategic investments. The government is currently discussing this proposal, and further details with respect to the modified conditions and the effective date of the amendment are expected to be known by the beginning of 2012.

**Capital gains.** In the Czech Republic, realized and unrealized capital gains are recognized.

Capital gains realized by a Czech or another EU/EEA parent company (except for Liechtenstein) on the transfer of shares in a subsidiary established in the Czech Republic or another EU/EEA country (except for Liechtenstein) are exempt from tax if the parent company maintains a holding of at least 10% of the subsidiary for an uninterrupted period of at least one year. This condition may be fulfilled subsequent to the date of the transfer.

Capital gains realized by a Czech or EU/EEA parent company (except for a Liechtenstein company) on the transfer of shares in a subsidiary in a contracting country (that is, a third country that has entered into a tax treaty with the Czech Republic) are also exempt from tax if the following conditions are satisfied:

- The subsidiary has a legal form comparable to a Czech joint-stock company (*akciová společnost*, or a.s.), a limited liability company (*společnost s ručením omezením*, or s.r.o.) or a cooperative (*družstvo*).
- The parent company has held an ownership interest of at least 10% in the subsidiary for at least one year (this condition may be fulfilled subsequent to the date of the transfer).
- The subsidiary is liable to a tax similar to corporate income tax at a rate of at least 12% in the tax period in which the parent company accounts for the respective capital gain and in the preceding tax period.

Other 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 (including capital losses on assets that qualify for exemption) 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. Unrealized gains on shares that qualify for exemption are not taxable and unrealized losses on such assets are nondeductible for tax purposes.

Capital gains realized by nonresidents on the following are considered Czech-source income and are consequently generally taxable:

- Sales of shares (securities) in foreign companies to Czech taxpayers or Czech permanent establishments
- Sales of shares (securities or share interests) in Czech companies, regardless of the tax residence of the purchaser

However, capital gains realized by EU/EEA parent companies (except for Liechtenstein companies) may be exempt from tax (see above).

**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 are subject to a final withholding tax at a rate of 15%. However, under the principles of 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 EU/EFTA countries (except for Liechtenstein) 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. This condition may be fulfilled subsequent to the date of distribution of the dividend. Dividend distributions between two Czech companies are exempt from tax under similar conditions.

In addition, dividends distributed by subsidiaries in a contracting country are also exempt from taxation under rules similar to those applicable to capital gains (see *Capital gains*).

**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*).
- Cost of insurance if related to taxable income.
- Membership contributions paid to legal entities under certain conditions.
- 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.
- 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.

In general, taxpayers must increase their tax base by the amount of any overdue liability accounted for in their books that represented a tax-deductible expense and that remains unsettled for 36 months.

**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. A 100% provision for overdue receivables may also be established if insolvency proceedings have been initiated with respect to the debtor's property and if the creditor makes a claim for such receivables against the debtor in the respective court.

*Reserves.* Taxpayers may create tax-deductible reserves for the repair of tangible assets included in Categories 2 through 6 for tax depreciation purposes (see *Depreciation*). The reserves must be created for a minimum of two tax periods and for the maximum number of tax periods specified for each asset category.

Reserves for repairs of tangible assets may be created tax-effectively only if cash equal to the amount of the reserve created is deposited in a specific bank account. This measure applies to reserves that are created after 2008.

**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, furniture and specified production machinery	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.

<b>Category</b>	<b>Straight-line rate</b>	<b>Accelerated-depreciation coefficient</b>
1	20% for first year and 40% for subsequent years	3 for first year and 4 for subsequent years
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.

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.

New tangible assets in Category 1 and 2 acquired in the period of 1 January 2009 through 30 June 2010 may be subject to super-accelerated depreciation. The time period for super-accelerated depreciation of tangible assets is one year for Category 1 and two years for Category 2.

Effective from 2010, the component depreciation of assets method may be used for accounting purposes. For tax purposes, the accounting result is adjusted as if this method was not used.

Specified tangible assets used in solar energy production are depreciated proportionally for a period of 240 months.

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	18
Software	36
Foundation expenses	60
Other intangible assets	72

**Relief for losses.** Losses may be carried forward for five 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 (Under legislation that is in the approval process, the standard VAT rate will be reduced to 17.5%, effective from 1 January 2013.)	20%/17.5%
Reduced rate; applicable to specified goods and services (for example, books, pharmaceuticals, food products and public transport) (Under legislation that is in the approval process, the reduced VAT rate will be increased to 14%, effective from 1 January 2012, and to 17.5%, effective from 1 January 2013.)	14%/17.5%
Social security contributions; the contributions are paid only up to the maximum assessment base	
Health insurance	
Employer	9%
Employee	4.5%

Nature of tax	Rate
Old-age pension	
Employer	21.5%
Employee	6.5%
Sickness	
Employer	2.3%
Employee	0%
Unemployment	
Employer	1.2%
Employee	0%
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	
Small vehicles (up to 3.5 tons)	CZK 1,200
Large vehicles	Electronic road tolls

## 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. In addition, the Czech courts have developed the abuse-of-law concept. The concept is similar to the one developed by the European Court of Justice (for example, *Halifax* [No. C-255/02]).

**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 tax deductibility of financing expenses (interest and associated expenses) with respect to related-party loans (including back-to-back loans) is limited by a debt-equity ratio of 4:1 (6:1 for banks and insurance companies). In addition, financing expenses with respect to profit-participating loans are nondeductible for tax purposes.

**Foreign investment.** Except for purchases of agricultural and forest land in the Czech Republic, the same rules apply to both Czech investors and foreign investors.

## F. Treaty withholding tax rates

The Czech Republic honors 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.

	Dividends %	Interest %	Royalties %
Albania	5/15 (b)	0/5 (g)	10
Armenia	10	0/5/10 (g)	5/10 (a)
Australia	5/15 (e)	10	10
Austria	0/10 (c)(s)	0 (t)	0/5 (a)(q)
Azerbaijan	8	0/5/10 (g)	10
Belarus (x)	10	0/5 (g)	10
Belgium	5/15 (b)(s)	10 (t)	0/5 (a)(q)
Bosnia- Herzegovina	5	0	0/10 (a)
Brazil	15	0/10/15 (g)(i)	15/25 (v)
Bulgaria	10 (s)	0/10 (g)(t)	10 (q)
Canada	5/15 (c)	0/10 (g)	10
China	5	0/7.5 (g)	10
Croatia	5	0	10
Cyprus	0/5 (c)(s)	0 (t)	0/10 (a)(q)
Denmark	15 (s)	0 (t)	0/5 (a)(q)
Egypt	5/15 (b)	0/15 (g)	15
Estonia	5/15 (b)(s)	0/10 (g)(t)	10 (q)
Ethiopia	10	0/10 (g)	10
Finland	5/15 (b)(s)	0 (t)	0/1/5/10 (m)(q)
France	0/10 (b)(s)	0 (t)	0/5/10 (q)(u)
Georgia	5/15 (b)	0/8 (g)	0/5/10 (u)
Germany	5/15 (b)(s)	0 (t)	5 (q)
Greece	15 (s)	0/10 (g)(t)	0/10 (a)(q)
Hungary	5/15 (b)(s)	0 (t)	10 (q)
Iceland	5/15 (b)(s)	0 (t)	10 (q)
India	10	0/10 (g)	10
Indonesia	10/15 (e)	0/12.5 (g)	12.5
Ireland	5/15 (b)(s)	0 (t)	10 (q)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Israel	5/15 (f)	0/10 (g)	5
Italy	15 (s)	0 (t)	0/5 (a)(q)
Japan	10/15 (b)	0/10 (g)	0/10 (a)
Jordan	10	0/10 (g)	10
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 (q)
Lebanon	5	0	5/10 (w)
Lithuania	5/15 (b)(s)	0/10 (g)(t)	10 (q)
Luxembourg	5/15 (b)(s)	0 (t)	0/10 (a)(q)
Macedonia	5/15 (b)	0	10
Malaysia	0/10 (l)	0/12 (g)	12
Malta	5 (s)	0 (t)	5 (q)
Mexico	10	0/10 (g)	10
Moldova	5/15 (b)	5	10
Mongolia	10	0/10 (g)	10
Montenegro	10	0/10 (q)	5/10 (a)
Morocco	10	0/10 (g)	10
Netherlands	0/10 (b)(s)	0 (t)	5 (q)
New Zealand	15	0/10 (g)	10
Nigeria	12.5/15 (c)	0/15 (g)	15
Norway	0/15 (c)(s)	0 (t)	0/5/10 (u)(q)
Philippines	10/15 (c)	0/10 (g)	10/15 (r)
Poland	5/10 (e)(s)	0/10 (g)(t)	5 (q)
Portugal	10/15 (j)(s)	0/10 (g)(t)	10 (q)
Romania	10 (s)	0/7 (g)(t)	10 (q)
Russian Federation	10	0	10
Serbia	10	0/10 (g)	5/10 (a)
Singapore	5	0	10
Slovak Republic	5/15 (c)(s)	0 (t)	0/10 (a)(q)
Slovenia	5/15 (b)(s)	0/5 (g)(t)	10 (q)
South Africa	5/15 (b)	0	10
Spain	5/15 (b)(s)	0 (t)	0/5 (n)(q)
Sri Lanka	6/15 (o)	0/10 (g)	0/10 (a)
Sweden	0/10 (b)(s)	0 (t)	0/5 (a)(q)
Switzerland	5/15 (b)(s)	0 (t)	5/10 (p)(q)
Syria	10	10 (g)	12
Tajikistan	5	0/7 (g)	10
Thailand	10	0/10/15 (g)	5/10/15 (h)
Tunisia	10/15 (b)	12	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)(q)
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
Nontreaty countries	15	0/15 (d)	15

(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 (other than a partnership) owns at least 25% of the capital of the payer. Under the Belgium treaty, dividends paid to partnerships may also qualify for the lower rate.
- (c) The lower rate applies if the receiving company (other than a partnership) owns at least 10% of the capital of the payer. Under the Canada treaty, the 5% rate applies if the receiving company controls at least 10% of the voting rights of the payer (except for dividends paid by a Canadian investment corporation). Under the Norway treaty, the 0% rate also applies to dividends paid to the government or specified institutions. Under the Cyprus treaty, the 0% rate applies if at least 10% of share capital of the payer is held by an entity (other than a partnership) for at least one year.
- (d) Interest on mutual deposits with banks in the interbank market is exempt from tax for recipients from nontreaty countries (subject to reciprocal treatment). For all Czech tax nonresidents (that is, recipients from treaty and nontreaty countries), interest on bonds issued by Czech taxpayers or the Czech Republic outside the Czech Republic is exempt from tax. The 15% rate applies to other interest.
- (e) The lower rate applies if the receiving company (other than a partnership) owns at least 20% of the capital of the payer.
- (f) The 5% rate applies if the receiving company (other than a partnership) owns more than 15% of the capital 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 Albania treaty, the 0% rate also applies to interest paid to any agency, including banks and financial institutions, wholly owned by the contracting state. Under the Georgia treaty, the 0% rate also applies to interest on loans and credits guaranteed by governments or related to sales of industrial equipment that are financed by loans. Under the Armenia, Azerbaijan and Uzbekistan treaties, the 5% rate applies to interest on bank loans. Under the Tajikistan treaty, the 0% rate also applies to interest from the sale on credit of merchandise or equipment or from a loan or credit granted by a bank. Under the Ethiopia treaty, the 0% rate also applies to, among other items, interest paid to institutions owned or controlled by the government whose sole purpose is the promotion of export or foreign investment. Under the Thailand treaty, the 10% rate applies to interest paid by financial institutions or insurance companies; otherwise the rate of the source country applies. Under the Syria treaty, the 0% rate also applies to interest paid to the central bank or any financial institution wholly owned by the government and to interest on loans and credits guaranteed by the government. Under the China treaty, the 0% rate also applies if the interest paid to selected government agencies or the central bank or if the receivable is financed, guaranteed or pledged by the government, the central bank or a selected government agency.
- (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
  - Public works
- (j) The 10% 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 government 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 paid 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 or permanent establishments of companies from EU member states to related-party companies located in other EU member states, or in Iceland, Norway or Switzerland, will be exempt from tax if the conditions stated in provisions implementing EU Directive 2003/49/EC, as amended, are satisfied and if an

advance ruling is issued by the Czech tax authority. If a Czech withholding tax applies to outbound royalties, EU/EEA tax residents may choose for each item of income to include the income in their tax return and have it taxed at the standard corporate income tax rate after deduction of associated expenses (while claiming a credit for the withholding tax paid against tax liability stated in the tax return), or to treat the withholding tax as a final tax on the income.

- (r) The 10% rate applies to royalties paid for patents, trademarks and industrial, commercial, or scientific equipment or information. The 15% rate applies to royalties paid for films.
- (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, or in Iceland, Norway or Switzerland, 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 (this condition may be met subsequently).
- (t) Interest from qualified instruments paid by Czech companies or permanent establishments of companies from EU member states to related-party companies (as defined in EU Directive 2003/49/EC) located in other EU member states, or in Iceland, Norway or Switzerland, is exempt from withholding tax if the conditions stated in the provisions implementing EU Directive 2003/49/EC, as amended, in the Czech tax law are satisfied and if an advance ruling is issued by the Czech tax authority. In addition, if Czech withholding tax applies to outbound interest, EU/EEA tax residents may choose for each item of income to include the income in their tax return and have it taxed at the standard corporate income tax rate after deduction of associated expenses (while claiming a credit for the withholding tax paid against tax liability stated in the tax return), or to treat the withholding tax as a final tax on the income.
- (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 areas of industry, commerce or science.
- (v) The 15% rate applies to royalties paid for trademarks. The 25% rate applies to other royalties.
- (w) The 5% rate applies to royalties paid for industrial, commercial or scientific equipment. The 10% rate applies to royalties paid for copyrights, software, patents, trademarks, designs or models, plans, secret formulas or processes, or information concerning industrial, commercial or scientific experience.
- (x) A protocol to the treaty has been ratified by the Czech parliament, but it has not been issued in the Collection of International Treaties. As a result, it is not yet effective. At the time of writing, it was not known whether the protocol will be effective from 1 January 2012. Under the protocol, the following withholding tax rates will apply:
  - Dividends: 5% if more than 25% of the shares is held directly. Otherwise the rate is 10%.
  - Interest: 0% if the interest is paid to the government or the central bank. Otherwise, the rate is 5%.
  - Royalties: 5%.

New tax treaties or protocols to the existing tax treaties with Bahrain, Belarus (see footnote [x] to the above table), Belgium, Denmark, Hong Kong SAR and Poland are in the ratification process.

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## Denmark

(Country code 45)

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*All telephone calls to the persons listed below who are resident in Copenhagen should be made to the persons' mobile telephone numbers. These persons no longer have office telephone numbers. Telephone calls to the office switchboard will be put through to the respective persons' mobile telephone numbers.*

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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	27 (a)
Interest	25 (a)

Royalties from Patents, Know-how, etc.	25 (b)
Branch Remittance Tax	0 (c)
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.
- (c) A Danish branch may be recharacterized as a Danish company (which could trigger dividend withholding tax on remittance of profits) if the Danish branch is controlled by owners resident in one or more foreign countries, the Faroe Islands, or Greenland if either of the following circumstances exists:
- The Danish branch is treated as a separate legal entity for tax purposes in the country(ies) of the controlling owner(s).
  - The country(ies) of the controlling owner(s) is located outside Europe and has not entered into a double tax treaty with Denmark under which withholding tax on dividends paid to companies is reduced or renounced.

## 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 a Danish mandatory joint taxation arrangement, regardless of whether these companies are fully or partially subject to tax in Denmark. This mandatory joint taxation comprises all Danish affiliated companies as well as permanent establishments and real estate located in Denmark (for details, see Section C). Companies resident in another country, foreign permanent establishments and real estate located outside Denmark are not included in such joint taxation.

The modified territoriality principle 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 financial companies (see Section E).

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 Danish permanent establishment.

**Rate of corporate tax.** For the 2012 income year, resident and nonresident companies are taxed at a rate of 25%.

**Capital gains.** Capital gains are taxed as other income at a rate of 25%.

Capital gains derived from a disposal of shares in a group company (group shares), shares in a subsidiary (subsidiary shares) and own shares (shares issued by the company) are exempt from tax regardless of the ownership period, while losses incurred on such shares are not deductible.

The following are considered group shares:

- Shares in a company that is subject to mandatory joint taxation under Danish rules together with the shareholder of the company
- Shares in a company that is eligible for inclusion in an international joint taxation arrangement under Danish rules (see Section C)

Subsidiary shares are shares in a company in which the shareholder directly owns at least 10% of the share capital. Capital gains on subsidiary shares in subsidiaries resident in Denmark are exempt from tax. In addition, capital gains on shares in subsidiaries resident in foreign countries can be exempt from tax if withholding tax on dividends distributed from the subsidiary may be reduced or eliminated under the EU Parent-Subsidiary Directive or a double tax treaty.

Certain antiavoidance rules apply if shareholders that do not each meet the requirements of holding group shares or subsidiary shares set up an intermediate holding company that by itself is able to meet the requirements.

Capital gains derived from a disposal of shares that are not own shares, group shares or subsidiary shares (known as portfolio shares) are taxable at the statutory corporate income tax rate of 25%, while losses are deductible, regardless of the ownership period. Taxation is based on the mark-to-market method under which gains and losses are computed on the basis of the market value of the shares at the beginning and end of the income year. It is possible to opt for taxation based on the realization method with respect to unlisted portfolio shares only. Listed portfolio shares must be taxed according to the mark-to-market method. Special rules apply to the carryforward of unused losses on portfolio shares.

Gains on the sale of goodwill and intellectual property rights 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 February to 31 March, tax returns must be filed by 1 August. 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 27%. However, withholding tax is not imposed on dividends paid to companies if the Danish shares qualify as subsidiary shares (see *Capital gains*) and if the withholding tax must be reduced or eliminated under the EU Parent-Subsidiary Directive or a double tax treaty. For a company owning Danish shares that are group shares rather than subsidiary shares, it is required that the withholding tax would have been reduced or

eliminated under the EU Parent-Subsidiary Directive or a double tax treaty if the shares had been subsidiary shares. In both cases, the recipient of the dividends must be a beneficial owner of the dividends and, accordingly, is entitled to benefits under the EU Parent-Subsidiary Directive or a double tax treaty.

**Interest paid.** In general, interest paid to foreign group companies is subject to withholding tax at a rate of 25%. The withholding tax is eliminated 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 (2003/49/EEC).
  - The companies have been associated (as stated in the directive) for at least a 12-month period.
- The interest accrues to a foreign company's permanent establishment in Denmark.
- The interest accrues to a foreign company, and a Danish parent company, indirectly or directly, is able to exercise control over such foreign company (for example, by holding more than 50% of the voting rights). Control must be fulfilled for a period of 12 months during which the interest is paid.
- The interest is paid to a recipient that is controlled by a foreign parent company resident in a country that has entered into a double tax treaty with Denmark and has controlled financial company (CFC) rules and 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  $\frac{3}{4}$  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  $\frac{3}{4}$  of the Danish corporate income tax.

In addition to the above requirements, the recipient of the interest must be a beneficial owner of the interest and, accordingly, is entitled to benefits under the EU Interest-Royalty Directive or a double tax treaty.

The above measures and exceptions also apply to noninterest-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. Only 25% of business entertainment expenses is deductible for tax

purposes. Expenses incurred on advisor fees are not deductible if they are incurred with respect to investments in shares that have the purposes of a full or partial acquisition of one or more companies and of the exercise of control over or participation in the management of these companies.

**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 from group shares or subsidiary shares are exempt from tax if the dividend withholding tax must be reduced or eliminated under the EU Parent-Subsidiary Directive or a double tax treaty (see *Capital gains* in Section B for the definitions of group shares and subsidiary shares). Dividends for which the dividend paying company has claimed a tax deduction from its taxable income is not exempt from tax for the Danish dividend receiving company, unless taxation in the source country is reduced or eliminated under the EU Parent-Subsidiary Directive.

Dividends received by a Danish permanent establishment may be exempt from tax if the permanent establishment is owned by a foreign company that is tax resident in the EU, European Economic Area (EEA) or in a country that has entered into a double tax treaty with Denmark.

Dividends received on a company's own shares are exempt from tax.

Dividends that are not covered by the above tax exemption, such as dividends from portfolio shares, must be included in the taxable income of the dividend receiving company and taxed at the normal corporate income tax rate of 25%. A tax credit is normally available to the dividend receiving company for foreign withholding taxes withheld by the dividend distributing company.

## Depreciation

*Immediate deductions.* For the 2011 income year, new acquisitions not exceeding DKK 12,300 (2011 amount) or with useful lives not exceeding three years are 100% deductible in the year of purchase. Computer software, operating equipment and ships for research and development, except operating equipment and ships used for exploration of raw materials, are 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, aircraft, rolling railway material, drilling rigs and facilities for producing heat and electricity) may be depreciated at an annual rate of up to 19%, 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. Facilities for producing heat and electricity with a capacity of less than 1 MW and wind-turbine generators (regardless of the capacity) may be depreciated at an annual rate of up to 25%, using the declining-balance method.

- **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 1,406,800 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 1,406,800 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*).

**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 net income of the jointly taxed companies, permanent establishments and real properties. An affiliation generally exists if the shareholder is able to control the company (for example, by holding more than 50% of the voting rights).

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 following table 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 2,160
Payroll tax (Loensumsafgift)	
Banks, insurance companies and other financial businesses; levied on total payroll	10.5%
Other VAT-exempt businesses, including some public bodies; levied on total payroll plus taxable profits, adjusted to exclude financial income and expenses	3.08%
Lotteries and information activities performed by tourist offices, other organizations and some public bodies; 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.** Under thin-capitalization 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 (2011

amount). 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 ratio of 4:1 (that is, a minimum of 20% equity). The thin-capitalization rules also apply to third-party debt if the third party has received guarantees and similar assistance from a group company of the borrower.

The Danish thin-capitalization rules are supplemented through 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 21,300,000 (2011 amount) are subject to these supplementary rules. For jointly taxed companies, the DKK 21,300,000 threshold applies to all of these companies together.

Under the “interest ceiling rule,” a company may only deduct net financial expenses corresponding to 4.5% (2011 rate) 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.

If a company establishes that it could obtain third-party financing on similar terms, it may be allowed 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.

Danish tax law does not recharacterize or impose withholding tax on the disallowed interest.

**Antiavoidance legislation.** Danish tax law does not include a general antiavoidance provision, but the courts tend to apply a substance-over-form principle.

However, certain recharacterization rules exist, such as a rule that recharacterizes debt as equity if the debt is treated as an equity instrument according to the tax rules in the country of the creditor.

Although a Danish company or taxable legal entity may change its domicile to another country, this would normally be considered a liquidation with the same tax effect as a taxable sale. The company can transfer its activities abroad, but, to prevent tax avoidance, such a transfer is considered a disposal.

**Controlled financial companies.** Under the controlled financial 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 as a result of gross negligence or deliberate omission. The documentation can be prepared in Danish, English, Norwegian or Swedish, and must be submitted to the tax authorities within 60 days on request. For a particular income year, such request may be made after the company has filed its tax return for the income year.

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/EEA. To qualify as small and medium-sized enterprises, enterprises must satisfy the following conditions:

- They must have less than 250 employees.
- 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	0 (o)	0	0
Bangladesh	10 (l)	0 (b)	10
Belarus	10	0	0
Belgium	15	0 (b)	0
Brazil	25	0 (b)	15 (g)
Bulgaria	5 (c)	0	0
Canada	5 (c)	0 (b)	10

	Dividends (a)	Interest (n)	Royalties (e)
	%	%	%
Chile	5 (c)	0 (b)	5/15
China (m)	10	0 (b)	10
Croatia	5 (c)	0 (b)	10
Cyprus	0 (c)	0 (b)	0
Czechoslovakia (i)	15	0	0/5
Egypt	15 (c)	0 (b)	20
Estonia	5 (c)	0 (b)	5/10
Faroe Islands	0 (l)	0	0
Finland	0 (l)	0	0
France (p)	28	0 (b)	25
Georgia	0/5/10 (f)	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	w0
India	15 (c)	0 (b)	20
Indonesia	10 (c)	0 (b)	15
Ireland	0 (c)	0	0
Israel (r)	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 (South)	15	0 (b)	10/15
Kuwait	0 (c)	0	10
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	10
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
Serbia	5 (c)	10	10
Singapore	0 (c)	0 (b)	10
Slovenia	5 (c)	0 (b)	5
South Africa	5 (c)	0	0
Spain (q)	28	0 (b)	25
Sri Lanka	15	0 (b)	10
Sweden	0 (l)	0	0
Switzerland	0 (s)	0 (t)	0 (t)
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

	Dividends (a)	Interest (n)	Royalties (e)
	%	%	%
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	0 (c)	0	0
United States	0/15 (l)	0	0
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	0/25 (b)	25

- (a) Under Danish domestic law, no withholding tax is imposed on dividends paid to companies if both of the following requirements are satisfied:
- The shares are group shares or subsidiary shares (see Section B).
  - 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 an EU member state and falls within the definition of a company under Article 2 of the EU Parent-Subsidiary Directive (90/435/EEC) and the directive provides that Denmark must eliminate or reduce the withholding tax on dividends.
- (b) Effective from the 2006 income year, withholding tax on interest paid to individuals was abolished.
- (c) The rate is 15% (Croatia, 10%; 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 (Cyprus, 10% of the capital; Japan and Trinidad and Tobago, 25% of the voting shares; Israel, 50% of the voting shares).
- (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.
  - 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 25% 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 0% if the recipient owns at least 50% of the share capital in the dividend distributing company and has invested more than €2 million in the dividend paying company. The withholding tax rate is 5% if the recipient owns at least 10% of the share capital in the dividend paying company and has invested more than €100,000 in the dividend paying company. The withholding tax rate is 10% in all other cases.
- (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, Moldova, Tajikistan and Uzbekistan have declared that they do not consider themselves obligated by the USSR treaty. Armenia and Kyrgyzstan have not yet declared whether they consider themselves obligated by the USSR treaty. Denmark has entered into tax treaties with Belarus, Estonia, Georgia, 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 Montenegro and Serbia. Denmark has entered into tax treaties with Croatia, Macedonia, Serbia and Slovenia. The withholding rates under these treaties 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 SAR.
- (n) In general, all interest payments to foreign group companies are subject to a final withholding tax of 25%. 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 CFCs for Danish tax purposes.
- (o) Under a new tax treaty between Denmark and Austria, the dividend withholding tax rate is 0% if the recipient is a company owning at least 10% of the payer. For other dividends, the rate is 15%. These rates will apply for income years beginning on or after 1 January 2011.
- (p) The double tax treaty between Denmark and France was terminated, effective from 1 January 2009. The countries will enter into a new treaty. However, at the time of writing, the countries had not yet entered into such treaty. Until a new tax treaty enters into force, Danish withholding taxes on dividends, interest and royalties are imposed according to Danish domestic law. Certain exemptions may apply (see Section B).
- (q) The double tax treaty between Denmark and Spain was terminated, effective from 1 January 2009. The countries will enter into a new treaty. However, at the time of writing, the countries had not yet entered into such treaty. Until a new tax treaty enters into force, Danish withholding taxes on dividends, interest and royalties are imposed according to Danish domestic law. Certain exemptions may apply (see Section B).
- (r) Under a proposed new tax treaty between Denmark and Israel, the withholding tax rate for dividends will be 0% if the recipient owns at least 10% of the share capital in the payer of the dividends for a consecutive period of at least 12 months. If this condition is not met, the dividend withholding tax rate will be 10%. The withholding tax rate on interest will remain unchanged. The withholding tax on royalties will be 0%. The new tax treaty has been ratified under Danish law, but it is not yet in force.
- (s) The withholding tax rate for dividends is 0% if the parent company owns at least 10% of the share capital in the payer of the dividends. If this condition is not met, the dividend withholding tax rate is 15%.
- (t) This rate applies if the recipient is the beneficial owner.

In addition to the double tax treaties listed in the table above, Denmark has entered into double tax treaties on savings, double tax treaties on international air and sea traffic, agreements on exchange of information in tax cases and agreements on promoting the economic relationship. The following are the countries with which Denmark has entered into such agreements:

- Double tax treaties on savings: Anguilla, Aruba, British Virgin Islands, Cayman Islands, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba (formerly part of the Netherlands Antilles), Guernsey, Isle of Man, Jersey, Montserrat and Turks and Caicos Islands
- Double tax treaties on international air and sea traffic: Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Hong Kong SAR, Isle of Man, Jersey, Jordan, Kuwait, and Lebanon
- Agreements on exchange of information: Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Belize, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Monaco, St. Kitts and Nevis, St. Vincent and the Grenadines, San Marino, Turks and Caicos Islands, and Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba (formerly part of the Netherlands Antilles)
- Agreements on promoting the economic relationship: Aruba, and Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba (formerly part of the Netherlands Antilles)

Agreements between Denmark and the following countries have been proposed:

- Agreement of exchange of information with respect to taxes: Dominica, Grenada, Liberia, Liechtenstein, Macau SAR, Marshall Islands, Montserrat, Seychelles and Vanuatu
- Double tax treaty on withholding tax rates: Czech Republic, Hungary and Kuwait

# Dominican Republic

(Country code 1)

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**A. At a glance**

Corporate Income Tax Rate (%)	29
Capital Gains Tax Rate (%)	29
Branch Tax Rate (%)	29
Withholding Tax (%)	
Dividends	29 (a)(b)
Interest	29 (b)(c)
Royalties	29 (b)
Branch Remittance Tax	0 (d)
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.  
 (d) The 0% applies if the branch has paid income tax on the profits.

**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, interest and capital gains. 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 29% for resident and nonresident companies. This tax rate, which was

established in Section 14 of the Tax Reform Law No. 139-11, is valid for a 2-year period or 24 months, beginning with the date on which the law entered into force (24 June 2011), and applies for the 2011, 2012 and 2013 fiscal years. This tax is levied proportionally to the calendar years contained in these periods. At the end of the 24-month period, the tax rate will be reduced to 25%.

Companies established in designated free-trade zones (FTZs) are granted full exemption from all taxes and fiscal charges for periods of up to 15 years or 20 years, depending on the location. The 2011 tax reform introduced a modification to the FTZ regime. Under the modification, the transfer of goods and/or rendering of services by FTZ companies to individuals or commercial entities in the Dominican Republic (exports of goods and services into the Dominican territory) are subject to income tax at a rate of 2.5% on the gross value of the local market sales.

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.

**Asset tax.** An annual 1% asset tax is assessed on the assets registered in the taxpayer's accounting books. The tax base is the net carrying value of the taxpayer's assets at the end of the fiscal year. Investments in shares of another company and real estate used for agricultural exploitation are excluded from the tax base. Corporate income tax is creditable against the asset tax. The asset tax is calculated in the annual income tax return.

For financial institutions and electricity companies, the tax base for calculating the asset tax is the total value of fixed assets, net of depreciation, according to the balance sheet at the end of the fiscal year.

**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. Gains derived from direct and indirect transfers of Dominican assets or rights located or economically used in the Dominican Republic are taxable and subject to the capital gains tax rate of 29%.

**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. The income tax return must be filed within four months after the end of the fiscal year.

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 60 days to file an 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 29%. The payer may use the tax as a credit against the corporate income tax liability.

**Foreign tax relief.** Foreign income 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 (that is, limited to a 29% rate).

### 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
- 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.** In general, provisions are not deductible for income tax purposes. However, the Tax Code and Regulations provide for

limited exceptions to this rule, including a provision for uncollectable accounts receivable. This provision is allowable as a deductible expense if it is calculated based on 4% of the accounts receivable balance at the close of the fiscal year and if the amount is authorized by the Tax Administration.

Provisions for gratifications, bonuses and other similar compensation items are deductible for income tax purposes if the amounts in the provisions are paid by the filing date of the income tax return.

**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.

Asset	Rate (%)
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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
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\$75,830 or approximately US\$2,000; the legal minimum wage for social security contributions is RD\$7,583 or approximately US\$200)	
Employer	7.09
Employee	3.04
Pension contributions; imposed on salary up to a maximum amount of 20 legal minimum wages (RD\$151,660 or approximately US\$3,991)	
Employer	7.10
Employee	2.87
Labor risk contributions; payable by employer on salary up to a maximum amount of 4 legal minimum wages	

Nature of tax	Rate (%)
(RD\$30,332 or approximately US\$798); 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
Financial asset tax; applicable to financial entities with assets exceeding RD\$700 million (approximately US\$18,348,624); tax base is net productive assets of the entities	1

### 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	29	29*	29

\* A 10% rate applies to interest paid to foreign financial institutions.

## Ecuador

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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 (%)	23 (a)
Capital Gains Tax Rate (%)	0 (b)
Branch Tax Rate (%)	23 (a)
Withholding Tax (%) (c)	
Dividends	0 (d)
Interest	23 (e)
Royalties	23
Technical Assistance	23
Services	23
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (f)

- (a) Companies that reinvest their profits in Ecuador and use them to acquire assets for productive activities in Ecuador are entitled to a reduction of 10 percentage points in the corporate income tax rate on the reinvested amount (that is, the reinvested profits are taxed at 13% in 2012) if the company increases its capital stock and such increase is registered with the Commercial Register by 31 December of the fiscal year.
- (b) Capital gains tax on sales of tangible assets is not imposed in Ecuador. 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) An 11% withholding tax is imposed on dividends paid to recipients located in tax havens or other jurisdictions with a lower rate of income tax or in the case of anticipated dividend distributions (before the annual income tax determination).
- (e) A 23% withholding tax is imposed on payments of interest to nondomiciled companies and nonresident individuals unless the interest is paid on loans granted by multilateral institutions (Andean Corporation for Promotion, International Monetary Fund or World Bank). Thin-capitalization rules apply to the deductibility of interest paid to related parties (see Section E).
- (f) 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 Superintendence 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 23% for 2012. Companies that reinvest their profits in Ecuador and use them to acquire assets for productive activities in Ecuador are entitled to a reduction of 10 percentage points in the corporate income tax rate on the reinvested amount (that is, the reinvested profits are taxed at 13% in 2012) if they retain the reinvested profits until 31 December of the tax year following the tax year in which the profits are earned.

The corporate tax rate will be gradually reduced until it reaches 22% in 2013.

**Capital gains.** Capital gains tax on sales of tangible assets is not imposed in Ecuador. 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.

**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 10 April and 28 April.

Companies must make an advance payment of income tax equal to the greater of the following two amounts:

- 50% of the income tax less the income tax withholdings for the preceding fiscal year.
- The sum of 0.2% of the equity of the company, 0.2% of the total costs and expenses deducted in the calculation of income tax, 0.4% of the total assets of the company and 0.4% of the total income subject to income tax less the income tax withholdings for the year. The equity and total assets are determined as of the end of the preceding fiscal year. The other amounts are the totals for the preceding fiscal 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.

Under a tax reform bill, the advance payment would be considered a minimum tax. As a result, if no tax is payable for a fiscal year, the advance tax would be considered a final tax payment that may not be refunded or offset against tax in future years.

The penalty for late filing is 3% of 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.** For 2012, a 23% withholding tax is generally imposed on the following payments abroad:

- Interest, royalties and payments for technical assistance to non-domiciled companies and nonresident individuals
- Payments to nonresident individuals for services rendered
- Payments to nondomiciled companies for professional services rendered abroad or occasional services rendered in Ecuador

Income tax withholding at a rate of 23% for 2012 is applied to all reimbursements of expenses abroad.

Penalties are imposed for failures to comply with the withholding requirements. Withholding agents who deliberately fail to provide taxpayers, totally or partially, with tax withholding slips are subject to imprisonment and fines.

**Dividends.** Dividends distributed after payment of the corporate income tax (23% for 2012) are not subject to tax. An 11% withholding tax is imposed on dividends paid to recipients located in tax havens or other jurisdictions with a lower income tax rate or in the case of anticipated dividend distributions (before the annual income tax determination).

**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 gross profit) 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 if corresponding taxes are withheld and if the payment constitutes taxable income for the recipient. The following cross-border payments are deductible subject to 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 paid to related parties that are subject to the thin-capitalization rules (see Section E)
- Payments under financial leases
- Indirect costs allocation (up to 5% of taxable basis)

Nondeductible expenses include the following:

- Interest paid on foreign loans, to the extent the interest rate exceeds the limit established by the Central Bank Board (the maximum rate is the Prime Rate), and interest on foreign loans not registered at the Ecuadorian Central Bank
- Losses on sales of assets between related parties
- Leasing payments with respect to leasebacks or trade with 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 and trucks	20
Plant and machinery	10
Computers	33

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. Other significant taxes**

The following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added tax; imposed 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	12
Currency exportation tax; imposed on all monies transferred abroad or deposited abroad through bank transfers, checks or wire transfers; tax is withheld at source; foreign banks operating in Ecuador must pay the tax monthly	2

#### **E. Miscellaneous matters**

**Foreign-exchange controls.** All transactions in Ecuador must be conducted in U.S. dollars.

**Debt-to-equity rules.** A thin-capitalization rule applies in Ecuador. Any interest paid on loans from related parties in excess of a 3:1 debt-to-equity ratio is not deductible.

**Free-trade zone.** The signatories of the Andean Community or the former Andean Pact (Bolivia, Colombia, Ecuador and Peru) 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 and Peru (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 following table.

	Dividends (a) %	Interest %	Royalties %
Belgium	15	10	10
Brazil	15	15	15 (c)
Canada	5/15	15	10/15
Chile	5/15	15	10/15
France	15	10/15	15
Germany	15	15	15
Italy	15	0/10	5
Mexico	5	10/15	10
Romania	15	10	10
Spain	15	10/15	15
Switzerland	15	10	10
Nontreaty countries	0	23 (b)	23

- (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) For 2012, a 23% withholding tax is imposed on the payment of interest abroad unless the interest is paid on loans granted by multilateral institutions.
- (c) Trademark royalties are taxed at a rate of 23% in 2012.

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**A. At a glance**

Corporate Income Tax Rate (%)	20/25 (a)
Capital Gains Tax Rate (%)	20/25 (a)
Branch Tax Rate (%)	20/25 (a)
Withholding Tax (%)	
Dividends	0
Interest	20 (b)
Royalties from Patents, Know-how, etc.	20 (b)
Certain Services Provided by Nonresident Entities	20 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	Unlimited (c)
Carryforward	5

- (a) The standard rates of corporate profit tax are 20% and 25% (see Section B).  
 (b) This is a final tax imposed on gross payments. The rate may be reduced under a tax treaty. Exemptions may apply in certain circumstances.  
 (c) 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 following table sets forth the standard rates of corporate profit tax.

Net income		Rate %
Exceeding EGP	Not exceeding EGP	
0	10,000,000	20
10,000,000	—	25

However, exceptions to these rates 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
- 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
- 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.
- 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, ships and aircraft	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 following table 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 EGP 875; paid by	
Employer	26
Employee	14

Nature of tax	Rate (%)
On amount in excess of EGP 875 of the base salary, with a maximum excess amount of EGP 1,050 a month; paid by	
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.

**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 table below sets forth maximum withholding rates provided in Egypt's double tax treaties for interest and royalties only.

To benefit from the tax rates provided by double tax treaties with respect to interest and royalties, within six months after the date of receipt of the payment, a nonresident entity or its legal representative must submit to the tax authorities an application to apply the tax rate stated in the treaty and request a refund of the difference between the domestic rate and the treaty rate. The application must be submitted on the form designed for this purpose together with required documents.

The following is the treaty withholding tax rate table.

	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

	Interest (%)	Royalties (%)
China	10	8
Cyprus	15	10
Czech Republic	15	15
Denmark	15	20
Finland (a)		
From Finland	0	20
From Egypt	20	20
France	15	15
Germany	15	Trademarks 20 Other 15
Greece	15	15
Hungary	15	15
India	20	According to domestic law in each country
Indonesia	15	15
Iraq		
From Iraq	10	One-half of tax rate in the country
From Egypt	20	10
Italy	20	15
Japan	20	15
Jordan	15	20
Korea (South)	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	15	15
Palestine	15	15
Poland	12	12
Romania (b)	15	15
Russian Federation	15	15
Serbia and Montenegro	15	15
Singapore	15	15
South Africa	12	15
Spain	10	12
Sudan	10	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 (c)	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) This treaty is being renegotiated.
- (c) The treaty with Yugoslavia applies to the republics that formerly comprised Yugoslavia.

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 Korea (North).

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(Country code 503)

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**A. At a glance**

Corporate Income Tax Rate (%)	25/30 (a)
Capital Gains Tax Rate (%)	10/30 (a)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	5 (a)
Interest	
Paid to Domiciled Companies	10 (b)
Paid to Nondomiciled Companies and Individuals	10/20/25 (c)
Royalties from Know-how and Technical Services	20/25 (d)
Video, Films and Similar Items	5 (e)
International Transportation Services	5 (f)
Insurance Services	5 (g)
Lottery Prizes and Other Prize Winnings	
Paid to Domiciled Companies and Individuals	15
Paid to Nondomiciled Companies and Individuals	25
Loans	5 (a)
Equity or capital decreases	5 (h)
Other Payments Made to Nonresidents	20/25 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	0 (i)

- (a) See Section B.
- (b) The withholding tax applies to interest received by individuals and companies on bank deposits. Interest paid between domiciled companies is not subject to withholding tax.
- (c) Amounts paid or credited to nondomiciled legal entities or individuals, resident, domiciled or incorporated in tax-haven jurisdictions, or paid or credited through legal entities resident, domiciled or incorporated in such jurisdictions, with a tax effect in El Salvador are subject to a 25% withholding tax, which is considered a final tax. Exceptions apply to the following:
- Payments for acquisitions or transfers of tangible assets
  - Payments to taxpayers in tax-haven jurisdictions located in Central America that have signed cooperation agreements with Salvadorian tax and customs authorities
  - Payments to taxpayers in tax-haven jurisdictions that have signed with El Salvador information exchange agreements or double tax treaties
  - Payments under circumstances in which reduced withholding tax rates apply

If an interest payment is made to a nondomiciled entity that is not registered with the Salvadorian Central Reserve Bank and not domiciled in a tax-haven jurisdiction, a 20% withholding tax applies. If an interest payment is made to a nondomiciled entity that is not registered with the Salvadorian Central Reserve Bank and domiciled in a tax-haven jurisdiction, a 25% withholding tax applies. Withholding tax at a reduced 10% rate applies if the recipient of the interest is a financial institution supervised in its country of origin and registered with the Central Reserve Bank of El Salvador. 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.

- (d) The 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 final tax. Amounts paid or credited to nondomiciled legal entities or individuals, resident, domiciled or incorporated in tax-haven jurisdictions, or paid or credited through legal entities resident, domiciled or incorporated in such jurisdictions, with a tax effect in El Salvador are subject to a 25% withholding tax, which is considered a final tax. Exceptions apply to the following:
- Payments for acquisitions or transfers of tangible assets
  - Payments to taxpayers in tax-haven jurisdictions located in Central America that have signed cooperation agreements with Salvadorian tax and customs authorities
  - Payments to taxpayers in tax-haven jurisdictions that have signed with El Salvador information exchange agreements or double tax treaties
  - Payments under circumstances in which reduced withholding tax rates apply

The 20% rate applies to royalties from know-how and technical services paid to nondomiciled entities that are not domiciled in tax-haven jurisdictions.

- (e) The withholding tax is imposed on payments to nondomiciled persons or entities for transfers of intangible assets or for the use, or grant of use, of rights over tangible and intangible assets related to cinematographic movies, video tapes, phonographic discs, radio serials, television serials, serials and strips reproduced by any means, video and track records, and television programs transmitted by cable, satellite or other similar media. If the recipient does not file an annual income tax return, the withholding tax is presumed to be a final tax.
- (f) The withholding tax is imposed on payments to foreign companies and individuals for international transportation services. If the recipient does not file an annual income tax return, the withholding tax is presumed to be a final tax.
- (g) The withholding tax is imposed on payments to nondomiciled insurance and reinsurance companies and reinsurance brokers, authorized by the Superintendent of the Financial System. If the recipient does not file an annual income tax return, the withholding tax is presumed to be a final tax.
- (h) A withholding tax rate of 5% applies to amounts paid or credited in capital or equity reductions, in the portion corresponding to capitalization or reinvestment of profits. For this purpose, the amounts paid or credited by the decrease of equity or capital corresponds to previously capitalized amounts.
- (i) Capital losses can be carried forward to offset capital gains for a period of five years, provided that the losses have been reported in previously filed tax returns.

## B. Taxes on corporate income and gains

**Corporate income tax.** Resident corporations are subject to tax on Salvadorian-source income and on certain types of foreign investment income. Nonresident corporations are subject to tax on Salvadorian-source income only. As a result, resident and nonresident taxpayers are subject to income tax on income derived from the following:

- Movable and immovable property in El Salvador
- Activities carried out in El Salvador
- Services rendered by domiciled and nondomiciled entities that are used in El Salvador

Taxable foreign investment income derived by resident corporations includes income, capital gains, profits, or interest derived from securities, financial instruments, and derivative contracts if any of the following conditions are met:

- The issuing entity is a national entity or domiciled in El Salvador.
- The capital is invested or employed in El Salvador.
- The risk assumed is placed or located in El Salvador.

Foreign investment income earned by a legal entity that is domiciled in El Salvador or that is considered a domiciled establishment or branch for Salvadorian tax purposes is taxable.

Income derived from interest, premiums and other earnings from deposits abroad paid by nondomiciled financial institutions to domiciled legal entities must always be declared to the Salvadorian tax authorities even if they have been subject to income tax or other similar taxes abroad. Taxes paid abroad can be credited according to the rules provided by the Salvadorian law.

**Corporate income tax rate.** The standard rate of income tax is 30% for Salvadorian companies, foreign companies with a permanent establishment in El Salvador and nondomiciled companies. However, companies that have sales equal to or less than \$150,000 are subject to a 25% income tax rate.

*Alternate minimum tax.* The alternate minimum tax is calculated by applying a rate of 1% to gross income.

Income tax must be calculated by applying the corporate income tax rate of 30% to net income and by applying the alternate minimum tax rate to gross income. The income tax payable is the higher amount resulting from the calculations.

Several types of taxpayers are exempt from the alternate minimum tax, including, among others, the following:

- Free trade zone users, inward processing regime users and International Service Law users
- The Government of El Salvador, municipalities, public utility corporations and foundations
- State trusts, international organisms and foreign governments
- Taxpayers exempt as a result of legal dispositions
- Taxpayers that initiate mercantile operations or business or other new activities, only for income related to the new activity for the first three tax years
- Taxpayers with losses or zero profits during two tax years
- Taxpayers with a gross profit margin of less than two times the alternate minimum tax rate (that is, 2%)
- Taxpayers with taxable income equal to or less than \$150,000

**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 30%.

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 price the following:

- Cost of the asset, which equals the purchase price less allowable depreciation claimed under the income tax law
- Improvements made to the asset
- All selling expenses necessary to complete the transaction

**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.** Domiciled entities in El Salvador that pay to, or register profits for, domiciled or nondomiciled entities or individuals must withhold income tax at a 5% rate. This serves as a definite income tax payment. Payment or registration of profits can be made in various forms, including, among others, payments in cash or securities and in-kind payments, regardless of whether they are considered dividends, quotas, excess payments, legal reserves, profits or earnings.

The above obligation also applies to representatives of parent companies, affiliates, branches, agencies and other permanent establishments that pay or credit profits to domiciled entities or individuals abroad.

Notwithstanding the above, if payments are made to an entity or individual domiciled or resident in a jurisdiction that has preferential tax regimes or low or nil taxes or that is a tax haven, a 25% withholding tax rate applies.

**Withholding tax on loans.** Legal entities or entities without legal capacity domiciled in El Salvador that remit cash or in-kind assets as loans or advance remittances or engage in other types of loan operations must withhold tax at a rate of 5% of such amounts if the amounts are remitted to any of the following:

- Partners, shareholders, associates, beneficiaries, and other related parties according to Section 25 of the Income Tax Law (for example, spouses and relatives in the fourth degree of consanguinity or second degree of kinship)
- Entities or individuals domiciled or resident in a jurisdiction that has preferential tax regimes or low or nil taxes or that is a tax haven
- Parent companies or branches domiciled abroad

Certain exceptions apply, such as to loans with a market value interest rate or a one-year term and to supervised financial institutions.

**Foreign tax relief.** In general, relief is granted in El Salvador for foreign taxes paid with respect to certain types of investment income earned abroad. Also, see Section F.

### 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 the following:

- Assets located in El Salvador
- Activities or transactions carried out in El Salvador
- Capital invested in El Salvador
- Services rendered in El Salvador and services rendered outside El Salvador that are used in El Salvador
- Certain types of investment income (see Section B)

In general, all costs and expenses necessary to produce and preserve taxable income are deductible for income tax purposes, provided all legal deductibility requirements are met.

**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
- 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.

<b>Asset</b>	<b>Rate (%)</b>
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.

<b>Asset's useful life Years</b>	<b>Deductible percentage (%)</b>
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 preserve taxable income may be amortized at an annual rate of up to 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.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added tax; transfers of fixed assets that have been used for four years or more are not subject to transfer taxes	13
Real property transfer tax; tax imposed on value of real property with respect to the amount that 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 46,475.80 (US\$5,311.52)	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 and Spain have entered into a double tax treaty. The treaty entered into force on 13 August 2009 and took effect in both countries on 1 January 2010. It is based on the Organization for Economic Cooperation and Development (OECD) model with some minor differences.

In Spain, the treaty applies to income tax on individuals, income tax on corporations, income tax for nonresidents, net worth tax, and local income tax and net worth tax. In El Salvador, the treaty applies to income tax.

For dividends, interest and royalties paid by companies domiciled in one signatory country to residents of the other signatory country, the treaty provides for maximum tax rates in the source country of 12% for dividends and 10% for interest and royalties. The treaty also provides for a maximum rate of 10% in the source country for services, unless the individual or company that accounts for the income has a permanent establishment in the country in which the services are rendered.

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## Equatorial Guinea

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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 (c)
Royalties from Patents, Know-how, etc.	10
Payments for Oil and Gas Services	6.25/10 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3/5 (e)

(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. For residents, the rate is 35%.
- (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.
- (e) In general, companies may carry forward net operating losses for three years. However, companies operating in the hydrocarbon sector may carry forward net operating losses for five years.

## 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*).

**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 corporate tax must be declared and paid by 31 March. The minimum corporate tax may be set off against the regular income tax payable for the same tax year.

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 following are the penalties:

- XAF 200,000 per month of delay for the filing of the return.
- 50% of the amount not declared if the return has a shortfall that exceeds 1/10 of the declared profit. The penalty is increased to 100% in case of bad faith.

**Dividends.** Dividends paid to nonresidents are subject to a 25% withholding tax.

Resident 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 chart 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
- Royalties from patents, brands, models or designs paid to a non-Economic and Monetary Community of Central Africa (Communauté Économique et Monétaire de l'Afrique Centrale, or 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, corporate income tax and individual income tax
- 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.

Asset	Rate (%)
Buildings	5 to 20
Plant and machinery, and transportation equipment	5 to 100
Office equipment	10 to 15

**Relief for losses.** In general, companies may carry forward net operating losses for three years. However, companies operating in the hydrocarbon sector may carry forward net operating losses for five 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. However, the OHADA Uniform Act on

Accounting Law contains the principle of consolidated financial statements.

#### 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
Worker 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 CFA franc BEAC (XAF).

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 XAF 1 million to XAF 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 XAF 10 million.

#### F. Tax treaties

Equatorial Guinea has entered into the tax treaty of the former Central African Economic and Customs Union (Union Douanière et Économique de l'Afrique Centrale, or UDEAC).

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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, 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 (%) (d)	
Dividends	0 (c)
Interest	0/21 (d)
Royalties	0/10/21 (e)
Rental Payments	21 (f)
Services	0/10/21 (g)
Salaries and Wages	21

- (a) Resident companies and permanent establishments of nonresident companies are not subject to tax on their income. They are subject only to tax at a rate of 21% on distributed profits and certain payments made. The tax rate is applied to the gross taxable amount divided by a specified percentage (for further details, see Section B).
- (b) Resident companies and permanent establishments of nonresident companies are not subject to tax on their capital gains received. 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) Withholding tax is not imposed on dividends. Dividends are subject to 21% corporate income tax at the level of the resident distributing companies only (for further details, see Section B).

- (d) 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.
- (e) Withholding tax at a rate of 10% is imposed on payments to nonresident individuals and companies. Royalties paid to companies resident in other EU countries or Switzerland are not subject to withholding tax if the provisions of the EU Interest-Royalty Directive are satisfied. A 21% withholding tax is imposed on payments to resident individuals.
- (f) Withholding tax at a rate of 21% is imposed on payments to resident individuals and nonresidents.
- (g) The 21% rate applies to payments to nonresidents from low-tax jurisdictions (a low-tax jurisdiction is a jurisdiction that does not impose a tax on profits or distributions or a jurisdiction in which such tax would be less than  $\frac{1}{3}$  of the Estonian tax payable by resident individuals on a similar amount of business income). The 10% 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 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
- 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 business income derived from Estonia.

**Tax rates.** Resident companies are subject to tax on the payments described in *Corporate income tax* at a rate of 21%. To calculate the corporate income tax for 2012, the tax rate is applied to the taxable amount divided by 0.79.

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 are exempt from tax until they are distributed.

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 by nonresidents 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 the determination of transfer prices (determination of value of transactions between related parties).

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.** Withholding tax is not imposed on dividends paid. Payers of dividends must pay corporate income tax at a rate of 21% on the gross amount of dividends paid. This income tax is treated as a payment of income tax by the distributing company and not as tax withheld from the recipient of the dividends.

Dividends received are not included in taxable income (see *Foreign tax relief*).

The following payments are also taxable as dividends at the level of the company:

- Decrease of share capital (if the decrease exceeds paid-in equity capital)
- Redemption of shares and the payment of liquidation proceeds in an amount that exceeds the monetary and nonmonetary payments made into the equity capital

**Interest.** Interest payments are generally exempt from withholding tax. 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.

**Foreign tax relief.** Dividends distributed by an Estonian company and a permanent establishment of a foreign company that had received dividends from a foreign company (except from a company located in a low-tax jurisdiction), are exempt from income tax if the following conditions are satisfied:

- The dividends are received from a taxable company resident in the European Economic Area (EEA) or Switzerland, or foreign tax has been paid on or withheld from the profits out of which the dividends were paid.
- The Estonian company receiving the dividends owns at least 10% of the shares or votes of the foreign company when the dividends were received.

The following profits are also exempt from tax:

- Profits allocated to a permanent establishment of an Estonian company in an EEA country or Switzerland
- Profits allocated to a permanent establishment of an Estonian company in another foreign country if foreign tax has been paid on the profits

Any foreign tax paid or withheld can be credited by an Estonian company against income tax payable on dividend distribution.

### 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	9/20
Social security tax	33
Mandatory funded pension contributions	2
Land tax	0.1 to 2.5
Unemployment insurance contributions (2012 rates); paid by	
Employer	1.4
Employee	2.8

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.** Effective from 1 January 2011, the official currency in Estonia is the euro (€).

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. Persons are considered associated if they have a common economic interest or if one person has a prevalent influence over another person. The transfer-pricing measure also covers transactions between nonresident legal entities and their permanent establishments in Estonia. Transfer-pricing documentation is required for the following entities:

- Entities with more than 250 employees (together with related parties)
- Entities operating in certain industries
- Entities that had turnover, including the turnover of related parties, of at least €50 million in the preceding financial year
- Entities that had consolidated net assets of at least €43 million in the preceding financial year
- Parties to a transaction if one of the parties is a resident of a low-tax jurisdiction

## F. Treaty withholding tax rates

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

	Dividends (a)	Interest (b)	Royalties (c)
	%	%	%
Albania	0	0	5
Armenia	0	0	10
Austria	0	0	5/10 (d)
Azerbaijan	0	0	10
Belarus	0	0	10
Belgium	0	0	5/10 (d)
Bulgaria	0	0	5
Canada	0	0	10
China	0	0	10
Croatia	0	0	10
Czech Republic	0	0	10
Denmark	0	0	5/10 (d)
Finland	0	0	5/10 (d)
France	0	0	5/10 (d)

	Dividends (a)	Interest (b)	Royalties (c)
	%	%	%
Georgia	0	0	10
Germany	0	0	5/10 (d)
Greece	0	0	5/10 (d)
Hungary	0	0	5/10 (d)
Iceland	0	0	5/10 (d)
Ireland	0	0	5/10 (d)
Isle of Man	0	0	10
Israel	0	0	10
Italy	0	0	5/10 (d)
Kazakhstan	0	0	15
Korea (South)	0	0	5/10 (d)
Latvia	0	0	5/10 (d)
Lithuania	0	0	10
Luxembourg	0	0	5/10 (d)
Macedonia	0	0	5
Malta	0	0	10
Moldova	0	0	10
Netherlands	0	0	5/10 (d)
Norway	0	0	5/10 (d)
Poland	0	0	10
Portugal	0	0	10
Romania	0	0	10
Serbia	0	0	5/10 (e)
Singapore	0	0	7.5
Slovak Republic	0	0	10
Slovenia	0	0	10
Spain	0	0	5/10
Sweden	0	0	5/10 (d)
Switzerland	0	0	5/10
Turkey	0	0	5/10 (d)
Ukraine	0	0	10
United Kingdom	0	0	5/10 (d)
United States	0	0	5/10 (d)
Nontreaty countries	0	0	10/21 (f)

- (a) Dividends are not subject to withholding tax under Estonian domestic law.
- (b) Interest is not subject to withholding tax under Estonian domestic law unless the interest paid exceeds the market interest (see Section B).
- (c) Royalties paid to a company resident in another EU country or Switzerland are not subject to withholding tax if the provisions of the EU Interest-Royalty Directive are satisfied.
- (d) The lower rate applies to royalties paid for the use of industrial, commercial or scientific equipment.
- (e) The lower rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films, but excluding software payments.
- (f) The 21% rate applies to rental payments to nonresidents. The 10% rate applies to royalties, including royalties paid for the use of industrial, commercial or scientific equipment.

## Ethiopia

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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	
On Deposits	5 (c)
On Foreign Loans	10
Royalties for the Right to Use Artistic Works	10 (c)
Royalties Paid by Holders of Large-Scale Mining Licenses	
Precious Minerals	8
Semiprecious Minerals	6
Metallic Minerals	5
Industrial Minerals	4
Construction Minerals	3
Salt	4
Geothermal	2
Technical Services Rendered Outside Ethiopia	10
Income from Casual Rental of Property (on Annual Gross Income)	15 (c)
Purchases of Goods for More than Birr 10,000	2 (d)
Purchases of Services for More than Birr 500	2 (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 rate applies if the supplier provides a tax identification number. Otherwise, the rate is 30%. For further details, see Section B.
- (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).

Tax on “windfall profit” obtained by a person as a result of change that occurred in local or international economic situations that was not caused by the person’s own efforts will be applied as soon as the Ministry of Finance and Economic Development prescribes the following:

- Businesses subject to the “windfall profit” tax
- The amount of income to be considered “windfall profit”
- The effective date for application of the tax

Shortly after parliament approved an amendment of the income tax proclamation providing for the introduction of a tax on “windfall profit” during its 18 November 2010 session, the Ministry of Finance and Economic Development (MoFED) instructed commercial banks to pay 75% of the profit that the MoFED determined that the banks made because of the devaluation of the birr. The amendment to the proclamation stated that businesses in the finance sector and oil exploration and mining sector were likely to be subject to such tax.

**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 Revenues and Customs Authority (ERCA) administers and collects certain taxes, including the business income tax and capital gains tax of 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 base 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, together with administrative penalties.

**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%.

Income withholding taxes are imposed on interest, royalties and certain other types of income. For a listing of these taxes, see Section A.

**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.

If, during a tax period, the direct or indirect ownership of the share capital or the voting rights of a body change more than 25%, by value or by number, the right to a loss carryforward no longer applies to losses incurred by that body in that tax period and previous tax periods.

**Group of companies.** The Ethiopian tax law does not allow the filing of consolidated returns.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate
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%
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 on 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	
Rates	10% to 100%
Surtax on all imported items mentioned above	Additional 20% of CIF value
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 the Czech Republic, France, Israel, Italy, Kuwait, Romania, the Russian Federation, South Africa, Tunisia and Turkey. Ethiopia has signed double tax treaties that have not yet been ratified with Algeria, Iran and Oman. Ethiopia also recently entered into double tax treaties with India and the United Kingdom.

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## **A. At a glance**

Corporate Income Tax Rate (%)	28
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	28
Withholding Tax (%)	
Dividends	15 (a)
Interest	10
Royalties from Patents, Know-how, etc.	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	8 (b)

(a) The dividend withholding tax applies only to dividends that are paid out of profits that are not subject to tax.

(b) 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.** In general, resident companies and branches of non-resident companies are subject to tax at a rate of 28%. However, companies that have been listed on the South Pacific Stock Exchange for at least three years and that have a resident shareholding of at least 40% are subject to tax at a rate of 20%.

Tax holidays are available to various enterprises and for various activities, including qualifying hotel projects, companies granted a tax-free regions license, qualifying information communications technology operators, approved activities in commercial agricultural farming and agroprocessing, approved activities with respect to processing agricultural commodities into biofuels and approved activities in renewable energy projects and power cogeneration.

**Capital gains.** The rate of the Capital Gains Tax, which took effect on 1 May 2011, is 10%.

**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
- 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 two, four or six months are granted to tax agents, 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.** Fiji does not have any specific measures 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.

Asset	Rate (%)
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.

Effective life Years	Minimum depreciation rate (%)	Maximum depreciation rate (%)	Assets in category
Less than 2	100	100	Computer software
2 to less than 3	50	60	Dies
3 to less than 5	33½	40	Computers
5 to less than 6½	20	24	Gaming machines
6½ 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	2½	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. In addition, a capital gain on sale of an asset is subject to Capital Gains Tax, effective from 1 May 2011.

**Relief for losses.** 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax; imposed on virtually all goods and services; financial services (except insurance services) and gambling are exempt	15
Hotel turnover tax	5
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 or offshore 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

	Dividends %	Interest %	Royalties %
Australia	20	10	15
Japan	15	10	15
Korea (South)	10/15 *	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

\* 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 (%)

24.5

Capital Gains Tax Rate (%)

24.5 (a)

Branch Tax Rate (%)

24.5

Withholding Tax (%) (b)	
Dividends	0/18.38/24.5 (c)
Interest	24.5 (d)
Royalties	24.5 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 (f)

(a) See Section B.

(b) The withholding taxes apply 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 10% of the capital of the payer.
- The recipient of the dividend is a company in a form mentioned in the EU Parent-Subsidiary Directive.

Companies resident in EU or European Economic Area (EEA) states (excluding Liechtenstein) are generally eligible for the tax exemption for dividends under the same conditions as comparable Finnish companies if the Finnish withholding taxes cannot be credited in the company's state of residence. Dividends paid to a company resident in an EU/EEA member state are subject to withholding tax at a rate of 18.38% if the shares constitute investment assets of the recipient company and the recipient owns less than 10% of the Finnish company or if the dividend is paid by a Finnish listed company to an unlisted company that owns less than 10% of the Finnish company.

(d) In general, interest paid to resident individuals is subject to a final withholding tax of 30% 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.
- 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.
- 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. Resident companies are generally those incorporated in Finland.

**Rate of corporate income tax.** Effective from 1 January 2012, the corporate income tax rate is 24.5%.

**Capital gains.** Gains derived by companies from the disposal of business assets are treated as ordinary business income. Gains derived from the disposal of machinery and equipment are deducted from the remaining book value of similar assets, reducing the depreciable basis of the remaining assets. Gains derived from the

disposal of buildings are calculated separately for each building by deducting the remaining acquisition cost from the sales price.

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 fixed 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.
- 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 the corporate income tax return within four months after the end of their accounting period.

Corporate income 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 3% (for 2011) is added to the final assessment. If the prepaid taxes exceed the final assessment, a refund with interest at a rate of 0.5% (for 2011) 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. Consequently, the company's 2011 fiscal year is open for adjustment until December 2017.

All major corporations can expect a tax audit, usually every fifth year to seventh year.

As a result of an audit, a penalty of up to 30% of the adjusted amount of taxable income may be imposed on a corporation. A

penalty charge can be added even though the adjustment does not result in additional income taxes (a change in the income amount is sufficient). Also, interest is charged on the additional tax (but not on the penalties) at a specified rate (7% for 2011). 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 no tax treaty is in force, domestic law provides relief for foreign tax paid. The credit is granted if the recipient Finnish corporation pays corporate income tax in the same year. If the Finnish company does not have any corporate income tax liability that year, no credit is granted. Effective from 1 January 2010, foreign tax credits may be carried forward five years under certain conditions. 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. However,

only 50% percent of entertainment expenses is deductible for corporate income tax purposes. 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.** In general, the possibility of establishing provisions or reserves for tax purposes is relatively limited. Deductions of warranty reserves and provisions for doubtful debts are limited to the amount of actual expected costs. These provisions are available for certain types of taxpayers under certain conditions.

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 in the current year or in previous years. Plant machinery, equipment and buildings are generally depreciated by 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 all machinery and equipment is higher than the fair market value, additional depreciation may be claimed for the balance of the machinery.

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 1994 through 2014 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. The scope of the application of the accelerated depreciation remains unchanged for 2012.

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 owning at least 20% of the shares 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 in Finland. To qualify, both companies must be resident in Finland, and at least 90% ownership, direct or indirect, must exist from the beginning of the tax year. Both companies must carry out business activities and be taxed under the Business Tax Act. Also, they must have the same accounting period. The taxpayer cannot create a tax loss by making 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 only 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	23
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	
Health insurance premium (2012 rate)	2.12
Employment pension premium; average rate (2012)	17.35
Group life, accident and unemployment insurance premium, on total salaries paid by the employer (average rates for 2012)	
Up to €1,879,500	0.8
Amount in excess of €1,879,500	3.2

## E. Miscellaneous matters

**Foreign-exchange controls.** No restrictions are imposed on the repatriation of 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 25% of the CFC's share capital or are entitled to at least 25% 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 or voting power 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.

A foreign permanent establishment (PE) of a foreign corporation is categorized as a CFC under the same conditions as subsidiaries if the foreign PE is located in a different state than the foreign corporation and if the income of the foreign PE is not taxed in the residence state of the foreign corporation. A transitional period applies until 1 January 2015 to PEs that existed before 31 December 2007.

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
- 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  $\frac{2}{3}$  of the Finnish corporate tax rate (currently, 24.5%), or 14.7%. If it is determined that the effective tax rate is below 14.7%, the CFC rules apply to the company.

For a company resident in a tax treaty country for tax purposes, 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 (24.5%), or 18.37%, 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 a tax treaty country has not taken advantage of special tax reliefs and if the overall tax rate in its home country is at least 18.37%, 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 14.7%.

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 14.7%. If yes, the CFC rules do not apply. However, the CFC rules do not apply to a company that has taken advantage of special tax reliefs if it is established in the following states:

- An EU or EEA member state (excluding Liechtenstein), provided that the company is genuinely established in its state of residence and is carrying on genuine economic activities in this state (substance requirement).
- A tax treaty state with sufficient information exchange, excluding countries mentioned in the black list, provided that the company satisfies the substance requirement mentioned above. The black list is a tentative list of tax treaty countries that are considered to have substantially lower corporate income tax rates than Finland. The list includes Barbados, Malaysia, Malta, Singapore, Switzerland, the United Arab Emirates and Uzbekistan.

**Antiavoidance legislation.** Under a general antiavoidance provision in the law, the tax authorities may look through certain transactions.

## F. Treaty withholding tax rates

The rates in the table below reflect the current double tax treaty rates. As a result of domestic legislation, lower rates may apply. Certain other exceptions may also apply. Please consult your local tax specialist for more information.

	Dividends (aa) %	Interest (w) %	Royalties (cc) %
Argentina	10/15 (b)	15 (ff)	3/5/10/15 (gg)
Armenia	5/15 (b)	5	5/10
Australia	5/15 (ll)	10	5
Austria	0/10 (ee)	0	5
Azerbaijan	5/10 (h)	10	5/10 (z)
Barbados	5/15 (f)	5	0/5 (c)
Belarus	5/15 (b)	5	5
Belgium	5/15 (b)	10	0/5 (c)
Bosnia- Herzegovina	5/15 (b)	0	10
Brazil (d)	10	15	10/15/25
Bulgaria	10	0	0/5 (c)
Canada	5/15 (f)	10	0/10 (e)
China	5/10 (b)	10	10
Croatia	5/15 (b)	0	10
Czech Republic	5/15 (b)	0	0/1/5/10 (hh)
Denmark	0/15 (ee)	0	0

	<b>Dividends (aa)</b>	<b>Interest (w)</b>	<b>Royalties (cc)</b>
	%	%	%
Egypt	10	0	25
Estonia	5/15	10	5/10 (x)
France	0	0/10	0
Georgia	0/5/10 (y)	0	0
Germany	10/15/25	0	0/5 (c)
Greece	13	10	0/10 (c)
Hungary	5/15 (b)	0	0/5 (c)
Iceland	0/15 (ee)	0	0
India	10	0/10 (q)	10
Indonesia	10/15 (b)	10	10/15 (g)
Ireland	0	0	0
Israel	5/15 (f)	10	10
Italy	10/15	15 (i)	0/5 (j)
Japan	10/15 (k)	10	10
Kazakhstan	5/15 (f)	10	10
Korea (South)	10/15 (b)	10 (i)	10
Kyrgyzstan	5/15 (b)	10	5
Latvia	5/15 (b)	10	5/10 (x)
Lithuania	5/15 (b)	10	5/10 (x)
Luxembourg (l)	5/15 (b)	0	5
Macedonia	0/15 (u)	10	0
Malaysia	5/15 (ee)	15 (i)	5
Malta	5/15 (b)	0	0
Mexico	0	0/10/15	10
Moldova	5/15 (b)	0/5	3/7
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)	10/15 (p)	10
Philippines	15/28 (f)	15	15/25 (m)
Poland	5/15 (b)	5	5
Portugal	10/15 (b)	15	10
Romania	0/5 (d)	0/5	2.5/5
Russian Federation	5/12 (s)	0	0
Singapore	5/10 (f)	5	5
Slovak Republic	5/15 (b)	0	0/1/5/10
Slovenia	5/15 (b)	5	5
South Africa	5/15 (ee)	0	0
Spain	10/15 (b)	10	5
Sri Lanka	15	10 (i)	10
Sweden	0/15 (ee)	0	0
Switzerland	0/10 (ee)	0	0
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	0	0
United States	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	24.5	24.5	24.5

- (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) The lower rate applies if the recipient is a corporation owning at least 15% of the payer.
- (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 lower tax rate applies in certain cases. 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 0% rate applies if, at the time the dividend is payable, the recipient of the dividends owns at least 50% of the share capital of the payer and has invested in the payer foreign capital of €2 million or more. The 5% rate applies if the recipient of the dividends owns at least 10% of the share capital of the payer and has invested in the payer foreign capital in excess of €100,000. The 10% rate applies to other dividends.
- (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) No withholding tax is imposed on dividends paid to a parent company resident in another EU country if the recipient of the dividends satisfies the following conditions:
  - It holds directly at least 10% of the capital of the payer.
  - The recipient of the dividend is a company in a form mentioned in the EU Parent-Subsidiary Directive.

Companies resident in EU or EEA states (excluding Liechtenstein) are generally eligible for the tax exemption for dividends under the same conditions as comparable Finnish companies if the Finnish withholding taxes cannot be credited in the company's state of residence.

- (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.
  - 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.
  - 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.

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**A. At a glance**

Corporate Income Tax Rate (%)	33½ (a)
Capital Gains Tax Rate (%)	0/15/33½ (a)(b)
Branch Tax Rate (%)	33½ (a)
Withholding Tax (%)	
Dividends	30/55 (c)(d)
Interest	0/50 (c)(e)
Royalties from Patents, Know-how, etc.	33½ (c)(e)
Branch Remittance Tax	30 (f)
Net Operating Losses (Years)	
Carryback	1 (g)
Carryforward	Unlimited (h)

- (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 at least 10% of the shares of the subsidiary for at least two years.
- (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) 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.
- (g) Losses carried back may not exceed €1 million.
- (h) The amount of losses used in a given year may not exceed €1 million plus 60% of the taxable profit exceeding this limit for such year.

## 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 and cannot take into account the related losses. 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 companies registered in France, regardless of the nationality of the shareholders and companies that have their place of effective management in France. 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 33⅓%.

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*). The 3.3% surtax does not apply to companies whose annual turnover is lower than €7,630,000 if at least 75% of the company is owned by individuals or by companies that themselves satisfy these conditions.

Members of consolidated groups must take into account the global turnover of the group to determine whether they reach the €7,630,000 threshold mentioned above.

In addition, a temporary additional surtax of 5% is assessed on the corporate tax for companies with turnover exceeding €250 million, for fiscal years ending from 31 December 2011 to 31 December 2013.

Taking into account the social security surtax, the marginal effective rate of French corporate income tax is 34.43% (33.33% + 1.1%). If the temporary contribution also applies, this rate is 36.1%.

A reduced corporate tax rate of 15% applies to the first €38,120 of the profits of small and medium-sized enterprises if certain conditions are met, including the following:

- The turnover of the company is less than €7,630,000.
- 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 €15 million or unless certain exemptions apply. For 2011, the annual minimum tax is calculated using the following schedule.

Turnover exclusive of VAT		Minimum corporate income tax €
Exceeding € (thousands)	Not exceeding € (thousands)	
15,000	75,000	20,500
75,000	500,000	32,750
500,000	—	110,000

The minimum tax due is deductible from the company's taxable income. This tax will be phased out by 1 January 2014.

**Capital gains.** Capital gains derived from the sale of fixed assets by French companies are subject to corporate income tax at the standard rate of 33.33% (34.43% including the 3.3% social security surtax).

Capital gains derived from the sale of qualifying participations are exempt from tax. Qualifying participations must satisfy both of the following conditions:

- They must be considered to be *titres de participation* (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest) or be eligible for the dividend participation exemption regime.
- They must have been held for at least two years before their sale.

However, 10% 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. As a result, the effective tax rate on such gains is 3.4%.

Capital losses incurred with respect to such qualifying participations may no longer be offset against 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 patents or patentable rights held for at least two years, unless the disposal takes place between related companies

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 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%. For listed real-estate companies, the rate is reduced to 19%.

**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 that have their financial year ending on 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 four 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 (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, which is computed on the gross dividend income (net dividend income and foreign tax credits) and added back to the recipient's taxable income. Effective for financial years beginning on or after 1 January 2011, dividends received from a subsidiary established in an uncooperative country (as defined in Article 238-0 A of the French Tax Code) are excluded from the parent-subsidiary regime.

The parent-subsidiary regime applies if the recipient holds at least 5% of the share capital of the distributing company.

In general, a 30% 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 10% or more of the shares of the subsidiary for at least two years.

The withholding tax rate is increased to 55% for distributed profits paid into uncooperative states.

**Withholding taxes on interest and royalties.** Under French domestic law, withholding tax is no longer imposed on interest paid to nonresidents. However, a 50% domestic withholding tax is imposed on interest on qualifying borrowings paid into uncooperative states.

A 33½% 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” subject to corporate income tax of different EU member states was abolished. A company is an “associated company” of a second company if any of the following conditions is 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.
- A third company has maintained a direct minimum holding of 25% in the capital of both the first and second companies for at least two years or commits itself to maintain such holding for a two-year period.

In these three situations, if the company chooses to undertake to keep the shares for at least two years, it must appoint a tax representative in France who would retrospectively pay the withholding tax if the shares are sold before the end of the two-year period.

Domestic withholding tax on royalties may be reduced or eliminated by tax treaties.

**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 French 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.
- 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.

Under thin-capitalization rules, related-party interest is tax-deductible only if it meets both an Arm’s Length Test and a Thin-Capitalization Test. These tests are applied on a stand-alone basis by each borrowing company. Effective from 1 January 2011, the thin-capitalization rules are extended to interest paid to third parties on the portion of the debt that is guaranteed by a related party,

or by a party whose commitment is guaranteed by a related party of the French borrowing entity.

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
- The interest rate at which the company could have borrowed from any unrelated financial institution, such as a bank, in similar circumstances (that is, the market rate)

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 all three of the following thresholds is not tax-deductible:

- The debt-to-equity ratio threshold, which is calculated in accordance with the following formula:

$$\frac{A \times B}{C}$$

- For the purposes of the above formula, A is the amount of interest that meets the Arm's Length Test, B equals 150% of the net equity of the borrower at either the beginning or end of the financial year, and C equals the total indebtedness of the French borrowing company resulting from borrowing from related companies.
- The earnings threshold, which equals 25% of the adjusted current income. The adjusted current income is the operating profit before the deduction of tax, related-party interest, depreciation and amortization, and certain specified lease rents.
- The interest income threshold, which equals the amount of 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 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% annual reduction of the interest balance that is carried forward applies beginning with the second subsequent financial year.

The 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. Only the head of the tax group may carry forward the excess interest.

The deduction of interest related to the acquisition of qualifying participations is limited for companies that have qualifying participations worth more than €1 million if the company does not demonstrate that it effectively makes the decisions concerning these investments and that it has effective control or influence over the acquired company. The nondeductible portion is computed by applying the ratio of the acquisition price to the debts of the acquiring company. The limitation applies to fiscal years beginning on or after 1 January 2012, and to the eight years following the acquisition. Consequently, it may apply to existing loans.

**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.

Depreciable assets composed of various parts with different characteristics 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.

Periodic assessment of the residual value of each component must be conducted to establish a (non-tax deductible) provision for impairment if needed.

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.

Asset	Rate (%)
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%.

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. However, the amount of losses used in a given year may not exceed €1 million, plus 60% of the taxable profit above that amount for such fiscal year.

In addition, enterprises subject to corporate tax may carry back losses against undistributed profits from the prior fiscal year. The carryback results in a credit equal to the loss multiplied by the current corporate tax rate, but losses carried back may not exceed €1 million. The credit may be used to reduce corporate income tax payable during the following five years with the balance being refunded at the end of the fifth year. A significant change in the company's activity or a reorganization 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 direct or indirect shareholding of at least 95% and for which the parent company has elected tax consolidation for a 5-year period.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax, standard rate	19.6
Territorial Economic Contribution; replaced the Business Activity Tax (Taxe professionnelle); capped to a certain amount of the value added by the company; maximum rate	3
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

Nature of tax	Rate (%)
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 1.1% contribution and 0.3% surtax)	3.6
Registration duty	
On sales of shares in stock companies (including <i>sociétés anonymes, sociétés par actions simplifiées and sociétés en commandites par actions</i> ), shares of private limited liability companies ( <i>sociétés à responsabilité limitée</i> , or SARLs) and interests in general partnerships ( <i>sociétés en nom collectif</i> , or SNCs); for sales of shares in stock companies, the tax rate is reduced to 0.5% for the portion of the price between €200,000 and €500 million, and to 0.25% for the portion of the price above €500 million	3
On sales of goodwill	3 to 5
On sales of professional premises, housing, businesses 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 in 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 and 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. As a result, to deduct the amount paid, the French entity must prove that the operation is effective (that it compensates effectively executed services) and is at arm's length. If these payments are made to a recipient established in an uncooperative country (see the discussion of dividends in Section B) or on a bank account located in an uncooperative country, the French entity must also prove that the operation's principal aim is not to locate the payment in that country.

For purposes 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.

**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. A new general obligation to provide documentation to the tax administration with respect to transfer pricing is imposed on companies, effective from 1 January 2010.

**Controlled foreign companies.** Under Section 209B of the French Tax Code, if French companies subject to corporate income tax in France have a foreign branch or if they 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.
- 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 generally to 6% to 10% of annual operating expenses, depending on the company's size, functions assumed and risks borne. 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.** To encourage investments in research and development (R&D), the tax credit for R&D expenditure equals 30% of qualifying expenses related to operations of R&D (qualifying expenses are 75% of the depreciation of fixed assets used in the research activity and 50% of staff expenses related to research) up to €100 million, and 5% for such expenses above €100 million. The rate is increased to 40% for the first year and to 35% for the following year for companies that benefit from the tax credit for the first time or that did not benefit from the regime for the five years preceding their request for the credit.

A ruling issued in April 2008 confirmed the eligibility of recharged R&D expenses.

## F. Treaty withholding tax rates

The following table is for illustrative purposes only.

	Dividends %	Interest (e)(g) %	Royalties (e) %
Albania	5/15	0/10	5
Algeria	5/15	0/10	5/10
Argentina	15	0/20	18
Armenia	5/15	0/10	5/10
Australia	0/5/15	0/10	5
Austria	0/15 (a)	0	0
Azerbaijan	10	0/10	5/10
Bahrain	0	0	0
Bangladesh	10/15	0/10	10
Belgium	0/10/15 (a)	15	0
Benin	25	18	0
Bolivia	15	0/15	15
Botswana	5/12	0/10	0/10
Brazil	15	0/10/15	10/15/25
Bulgaria	5/15	0	5
Burkina Faso	25	18	0
Cameroon	15	0/15	15
Canada (b)	5/15	0/10	0/10
Central African Republic	25	18	0
Chile	15	5/15	5/10
China (d)	10	0/10	10
Congo (Republic of)	15/20	0	15
Côte d'Ivoire	15	0/15	0/10/33½
Croatia	0/15	0	0
Cyprus	0/10/15 (a)	0/10	0/5
Czech Republic	0/10 (a)	0	0/5/10
Ecuador	15	0/10/15	15
Egypt	0	0/15	15
Estonia	0/5/15 (a)	0/10	5/10
Ethiopia	10	0/5	7.5
Finland	0/15 (a)	0/10	0
Gabon	15	0/10	0/10
Georgia	0/5/10	0	0

	Dividends %	Interest (e)(g) %	Royalties (e) %
Germany	0/15 (a)	0	0
Ghana	5/15	0/10/12.5	10
Greece	0/25 (a)	12	5
Guinea	15	0/10	0/10
Hungary	0/5/15 (a)	0	0
Iceland	5/15	0	0
India (h)	10/15	0/10/15	10/20
Indonesia	10/15	0/10/15	10
Iran	15/20	0/15	0/10
Ireland	0/10/15 (a)	0	0
Israel	5/15	0/5/10	0/10
Italy	0/5/15 (a)	0/10	0/5
Jamaica	10/15	0/10	10
Japan	0/5/10	0/10	0
Jordan	5/15	0/15	5/15/25
Kazakhstan	5/15	0/10	10
Korea (South)	10/15	0/10	10
Kuwait	0	0	0
Latvia	0/5/15 (a)	0/10	5/10
Lebanon	0	0	33⅓
Libya	5/10	0	10
Lithuania	0/5/15 (a)	0/10	5/10
Luxembourg	0/5/15 (a)	10	0
Macedonia	0/15	0	0
Madagascar	15/25	0/15	10/15
Malawi	10/25	18	0
Malaysia	5/15	0/15	10/33⅓
Mali	25	0/18	0/33⅓
Malta	0/15 (a)	0/5	0/10
Mauritania	25	18	0/33⅓
Mauritius	5/15	0/18	0/15
Mexico	5/15	0/15	0/15
Mongolia	5/15	0/10	0/5
Morocco	0/15	10/15	5/10/33⅓
Namibia	5/15	0/10	0/10
Netherlands	0/5/15 (a)	0/10	0
New Caledonia	5/15	0	0/10
New Zealand	15	0/10	10
Niger	15/25	18	0/33⅓
Nigeria	12.5/15	0/12.5	12.5
Norway	0/15	0	0
Oman	0	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)	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	15/16	0/15	0/15
Singapore	10/15	0/10	0/33⅓
Slovak Republic	10	0	0/5

	Dividends %	Interest (e)(g) %	Royalties (e) %
Slovenia	0/15	0/5	0/5
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
Syria	0/15	0/10	0
Thailand	15/20	0/3/10	0/5/15
Togo	25	18	0
Trinidad and Tobago	10/15	0/10	0/10
Tunisia	25	12	5/15/20/33½
Turkey	15/20	0/15	10
Ukraine	0/5/15	0/2/10	0/10
USSR (c)	15	10	0
United Arab Emirates	0	0	0
United Kingdom	0/15 (a)	0	0
United States	5/15	0	0/5
Uzbekistan	5/10	0/5	0
Venezuela	0/5/15	0/5	5
Vietnam	5/15	0	10
Yugoslavia (f)	5/15	0	0
Zambia	10/25	18	0
Zimbabwe	10/15	0/10	10
Nontreaty countries	30/55 (i)	0/50 (i)	33½

- (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 10% 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 has agreed with Turkmenistan to apply the France-USSR tax treaty. France applies the France-USSR tax treaty to Belarus, Kyrgyzstan, Moldova and Tajikistan.
- (d) The tax treaty between France and China does not apply to the Hong Kong SAR.
- (e) 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 if certain conditions are met (see Section B).
- (f) France is honoring the France-Yugoslavia treaty with respect to Bosnia-Herzegovina, Montenegro and Serbia.
- (g) The French domestic law applies. As a result, the rate is 0% under normal circumstances. The rates listed for interest in the table are the treaty rates.
- (h) The general rates under the treaty are 15% on dividends and interest and 20% on royalties. However, these rates are reduced in practice according to a “most-favored-nation” clause.
- (i) The 50% and 55% rates apply only to payments made into uncooperative countries (see Section B).

## Gabon

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**A. At a glance**

Corporate Income Tax Rate (%)	35 (a)(b)
Capital Gains Tax Rate (%)	35 (c)
Withholding Tax (%)	
Dividends	10/15/20 (d)
Interest	10 (e)
Royalties from Patents, Know-how, etc.	10 (f)
Payments for Services	10 (g)
Branch Remittance Tax	10 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is 1% of turnover (unless exempt). See Section B for details.
- (b) Oil companies' subcontractors with a permanent establishment in Gabon are subject to tax on taxable turnover. The tax rate for these subcontractors is currently 8.68% (see Section D).
- (c) In certain circumstances, the tax is deferred (see Section B).
- (d) The rate is 10% if the parent-subsidiary regime applies. The 15% rate applies to resident and nonresident legal entities. The 20% rate applies to payments made to resident and nonresident individuals.
- (e) This 10% rate applies to interest paid to resident and nonresident individuals and nonresident legal entities, excluding interest on bonds.
- (f) This withholding tax applies to payments to nonresidents.
- (g) This withholding tax applies to payments made 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% of annual turnover, but not less than XAF 1 million. The base for the calculation of the minimum corporate tax is the global turnover realized during the tax year.

**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.

**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 two installments, which are due on 30 November and 30 January. The first installment equals 25% of the preceding year's corporate tax. The second installment equals 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% for the first month and 3% for subsequent months.

**Dividends.** Dividends paid to resident and nonresident individuals are subject to a 20% withholding tax. Dividends paid to resident and nonresident legal entities are subject to a 15% withholding tax. Resident recipients must include the gross dividend in taxable income, but they receive a corresponding 15% tax credit to prevent double taxation.

If the parent-subsidiary regime applies, dividends received by parent companies are subject to a 10% tax. The parent-subsidiary regime applies if the following conditions are satisfied:

- The shares owned by the parent company represent at least 25% of the capital of the subsidiary.
- Both the parent and subsidiary have their seat in a Central African Economic and Monetary Community (CEMAC) member country (Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon).
- The holding company retains the shares registered in its own name for at least two years from the date of issuance of the shares.

**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. However, Gabon's tax treaties with Belgium, Canada and France provide 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 chart of the Organization for the Harmonization of Business Law in Africa.

Business expenses are generally deductible unless specifically excluded by law. To be deductible, an expense must satisfy the following general conditions:

- It must be made in the direct interest of the company or linked to the normal management of the company.
- It must be real and justified.
- It must result in the diminution of the net assets of the company.
- It must be registered in the company books as an expense of the related fiscal year.
- It must not be expressly excluded from deductible expenses by law.
- It must not be considered as an abnormal transaction.

The following expenses are deductible, subject to the conditions mentioned above:

- Head office overhead and remuneration for certain services (studies and technical, financial or administrative assistance) paid to nonresidents
- 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
- 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.

Asset	Rate (%)
Buildings	8 to 20
Plant and machinery and transport equipment	8 to 33.3
Office equipment	15 to 20

An accelerated depreciation method may be used for certain fixed assets, 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.

Nature of tax	Rate (%)
Business activity tax ( <i>license</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 and payroll tax; on taxable turnover	8.68
Registration duties, on transfers of real property or businesses	4 to 8
Social security contributions, on an employee's gross salary; limited to XAF 1,500,000 a month	
Employer	20.1
Employee	2.5
Value-added tax (VAT); imposed on corporations realizing annual turnover in excess of XAF 80 million from general business activities and on corporations realizing annual turnover in excess of XAF 500 million from forestry development activities	
Standard rate	18
Reduced rate, on certain items such as sugar	10
Exports and international transport	0
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 African and Mauritian Common Organization (OCAM) multilateral tax treaty, as well as tax treaties with Belgium, Canada and France. The withholding rates under these multilateral treaties and the treaties with Belgium, Canada and France are listed in the following table.

	Dividends %	Interest %	Royalties %
Belgium	15	15	10
Benin	15	15	– (a)
Cameroon	15	15	– (a)
Canada	15	10	10 (a)
Central African Republic	15	15	– (a)
Chad	15	15	– (a)
Congo (b)	15	15	– (a)
Côte d'Ivoire	15	15	– (a)
Equatorial Guinea	15	15	– (a)

	Dividends %	Interest %	Royalties %
France	15	10	10
Senegal	15	15	– (a)
Togo	15	15	– (a)
Nontreaty countries	15	10 (c)	10

- (a) Withholding tax is not 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 footnote (e) to Section A.

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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 Income Tax Rate (%)	15
Capital Gains Tax Rate (%)	15
Permanent Representation Tax Rate (%)	15
Withholding Tax (%)	
Dividends	5
Interest	5
Royalties from Patents, Know-how, etc.	15
Management Fees	15
Income from International Transport or International Communications	10
Income from Oil and Gas Operations	4
Payments of Other Georgia-Source Income to Foreign Companies	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5/10

### B. Taxes on corporate income and gains

**Corporate income 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 representation (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, net of 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%, 5%, 10% or 15% (see Section A).

Georgian law allows foreign investment in various forms, including investment through wholly or partially 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 income tax rate is 15%.

**Special types of enterprises.** The Georgian tax law provides for beneficial tax treatment for enterprises operating in Georgia with the following statuses:

- International Financial Company
- Special Trade Company
- International Company
- Virtual Zone Person
- Tourist Zone Entrepreneur

The Georgian Tax Authorities (GTA) grant the above statuses according to the rules defined by the Minister of Finance of Georgia. The statuses are described below.

*International Financial Company.* A financial institution may obtain the status of International Financial Company for the purpose of tax benefits if its Georgian-source income derived from financial operations or financial services does not exceed 10% of its worldwide gross income. Income received from financial operations and financial services between International Financial Companies is not considered to be income received from Georgian sources. An International Financial Company must be established outside a Free Industrial Zone. International Financial Companies are exempt from corporate income tax on income derived from financial operations, financial services and the sale of securities issued by nonresident persons.

*Special Trade Company.* An entity conducting its activities in an authorized warehouse may be granted Special Trade Company status for corporate income tax exemption purposes. A Special Trade Company may supply and re-export foreign goods, as well as purchase foreign goods from an entity without such status for further supply or re-export. A Special Trade Company may also derive income (including Georgian-source income) from other

allowable activities if such income does not exceed 5% of its total gross income. A Special Trade Company is prohibited from the import or purchase of Georgian goods for further supply, rendering of services in Georgia and the operation of an authorized warehouse. The status of Special Trade Company is cancelled for a calendar year if an authorized representative of such company submits an application to the GTA at least five business days before the beginning of the relevant calendar year. A Special Trade Company is exempt from corporate income tax on income received from allowable activities.

*International Company.* International Company status for tax purposes may be granted to a company operating in a Free Industrial Zone. An International Company primarily engages in the manufacturing and export of goods outside Georgia from a Free Industrial Zone. The status of International Company is subject to cancellation if the company engages in activities prohibited by the law. International Companies are exempt from corporate income tax on income derived from the supply of goods and services to other International Companies in the territory of Free Industrial Zones or outside the economic territory of Georgia.

*Virtual Zone Person.* Virtual Zone Person status for tax purposes may be granted to a company engaged in information technology activities. Virtual Zone Persons are exempt from corporate income tax on income derived from the supply of self-produced international technology outside Georgia.

*Tourist Zone Entrepreneur.* Tourist Zone Entrepreneur status for tax purposes may be granted to an entrepreneur that builds a hotel in accordance with the rule provided in the Law of Georgia on the Support of Development of Free Tourism Zones and ensures the operation of the hotel. Tourist Zone Entrepreneurs are exempt from corporate income tax on income derived from the rendering of hotel services until 1 January 2026.

**Capital gains.** No separate capital gains tax is imposed in Georgia. Realized capital gains are included in taxable income and are subject to tax at the regular corporate income tax rate. Realized capital losses can be carried forward together with other losses and be offset against profit in future tax years (see Section C).

**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 corporate income tax. Each payment is equal to 25% of the corporate income 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 corporate income tax liability for the current tax year.

A taxpayer that had no taxable income during the preceding tax year does not have to make advance corporate income tax payments during 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 corporate income tax return must be filed and the balancing payment of corporate income tax must be made 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 complete or incomplete month of delay. However, the total amount of the penalty may not be less than GEL 200 or more than 30% of the amount of tax liability. A penalty for an understatement of tax liability or overstatement of refundable amount that results from a change of the taxable point by the GTA is imposed at a rate of 10% of the relevant amount. The percentage is 50% in all other cases.

**Dividends.** A dividend 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 income. The current dividend withholding tax rate is 5%. It will be reduced to 3%, effective from 1 January 2013, and will be completely eliminated, effective from 1 January 2014.

The following types of dividends are not subject to withholding tax and are not included in taxable income:

- Dividends paid by International Financial Companies
- Dividends paid by International Companies in Free Industrial Zones
- Dividends paid on free-floating securities (debt or equity securities listed on the stock exchange with a free-float rate in excess of 25% as of 31 December of the current and preceding reporting year, according to information provided by the issuer of the securities to the stock exchange)

**Interest.** An interest withholding tax is imposed on interest payments made by a permanent establishment of a nonresident or a resident or on their behalf. However, interest paid to resident banks is not subject to withholding tax. The current interest withholding tax rate is 5%, which will be eliminated, effective from 1 January 2014.

The following types of interest payments are not subject to withholding tax and are not included in taxable income:

- Interest paid by financial institutions licensed according to the Georgian law. However, interest is included in gross income if the recipient is also a licensed financial institution.
- Interest paid by International Companies in Free Industrial Zones.
- Interest paid on free-floating securities.
- Interest paid on debt securities issued by Georgian entities listed on recognized foreign stock exchanges.

**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 (that is, up to the amount of corporate income tax that would have been payable on such income in Georgia).

### C. Determination of taxable income

**General.** Taxable income is computed on the basis of International Financial Reporting Standards (IFRS), modified by certain tax adjustments. It includes the following:

- Trading income
- Capital gains
- Income from financial activities
- Gratuitously received assets
- Works and services
- 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 (NBG) for the date of receipt of the income.

In general, to calculate taxable income, taxpayers may deduct from gross income all documented expenses contributing to the generation of such income. However, certain expenses are nondeductible or partially deductible for tax purposes.

Nondeductible expenses include the following:

- Expenses related to noneconomic activities, which include contributions to charity organizations in excess of 10% of taxable income before taking into account the charitable expenses.
- Entertainment expenses, unless a taxpayer conducts economic activities of an entertaining nature and the entertainment expenses are incurred in the course of these activities.
- Expenses related to the generation of income exempt from corporate income tax.
- Expenses incurred on goods and services that are outside the scope of corporate income taxation, except for a gratuitous supply to the state or a local government.
- Corporate income tax paid or payable in Georgia or abroad.
- Penalties and fines paid or payable to the Georgian state budget.
- Interest expenses above the percentage established annually by the Minister of Finance of Georgia (24% for 2011) and subject to thin-capitalization rules in certain cases (see Section E).
- Representation expenses in excess of 1% of the gross income earned during the tax year.
- Provisions for doubtful receivables (see *Provisions*).
- Capital repair expenses with respect to fixed assets in excess of 5% of the balance value of the corresponding tax depreciation group of fixed assets at the end of the preceding tax year. However, such expenses are fully deductible if a person applies the full depreciation method (see *Tax depreciation*). Repair expenses with respect to rented fixed assets are deductible according to the rules discussed in *Tax depreciation*.
- Expenses incurred on goods and services purchased from a Micro Business. An individual may obtain the special status of a Micro Business for tax purposes if it conducts economic activities independently without hiring employees, receives annual gross income up to GEL 30,000, maintains an inventory balance of no more than GEL 45,000 and undertakes activities that are not banned for a Micro Business as provided by the government of Georgia.

Virtual Zone Persons may deduct expenses from their gross income in proportion to the part of their income received from the supply of international technology in Georgia.

To calculate taxable income, an enterprise must use the same method of accounting (cash method or accrual method) that is used in its financial accounting.

Notwithstanding the above, for payments made to individuals and payments to nonresident enterprises for the rendering of services, the moment of payment is considered to be the moment of incurring the expenditure. This cash-basis rule does not apply to licensed financial institutions.

Fines defined by agreements and other penalties are also accounted for on a cash basis.

**Inventories.** Inventories produced or purchased are valued at the production cost or purchase price. Costs for storage and transportation must be included in the value of inventories. If inventories cannot be sold at a price above cost, they must be valued at the possible realization price less any selling expenses. The actual cost (of identifiable items), weighted average cost or first-in, first-out (FIFO) methods may be used to value inventories.

**Provisions.** Banks, credit unions and insurance companies may deduct certain provisions from their gross income of the reporting year in accordance with the rules established by the NBG. Banks and credit unions may deduct allocations to reserves for bad debts if doubtful receivables have been written off in their financial accounting books.

Insurance companies may deduct from their gross income of a reporting year net insurance losses incurred in the same reporting period, excluding income from regression and survived property.

Leasing companies may deduct from their gross income allowances for bad debts related to leasing activities according to the rules set by the Minister of Finance of Georgia. For this purpose, a leasing company is an entity that derives at least 70% of its total gross income for a tax year from the leasing of property. 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 of Georgia (TCG).

Depreciation is not assessed with respect to land, works of art, museum items, historical objects (except for buildings) and other nonamortized fixed assets. Expenditures on fixed assets with a value below GEL 1,000 (approximately US\$600) and biological assets (animal or plant) can be fully deducted from gross income in the year in which the exploitation of the fixed assets begins or in the year in which the expenses on biological assets are incurred.

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\$600), the entire balance of the group may be claimed as a tax deduction.

If the realization price of fixed assets of a group (for a gratuitous supply, the market value of a group) during the tax year exceeds

the book value of the group at the end of this tax year, the surplus amount is included in the gross income and the book value of the group equals zero.

The amount of depreciation for each group is calculated by applying the depreciation rates for the group to the tax value of the group at the end of the tax year. The following are the principal assets and depreciation rates for each group.

<b>Group</b>	<b>Assets</b>	<b>Depreciation rate (%)</b>
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
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 life or at an annual rate of 15% if it is impossible to determine the useful life of a particular intangible asset. The annual amortization is apportioned on a pro rata basis if the intangible asset is used for a certain time period during a year. Amortization expenses with respect to intangible assets are deductible for tax purposes. Intangible fixed assets with a value below GEL 1,000 can be fully deducted from gross income in the year when the respective expense is incurred. Expenses incurred to purchase or produce amortized intangible fixed assets are not capitalized if they had been deducted previously from gross income.

Taxpayers may use an alternative method to compute the deduction of expenditure on fixed assets, other than nonamortized fixed assets and fixed assets contributed into the capital of a company. Under this alternative method, a company may fully deduct the cost of such assets in the year in which it begins to exploit the assets, including their capital repair expenses. These fixed assets are not included in the asset groups for depreciation.

If such assets are sold subsequently, the sale price (for a gratuitous supply, market value) is included in gross income. If a company uses the alternative method, it must use this method for all fixed assets purchased or produced thereafter and must use this method at least for five years.

*Leasing.* Each fixed asset supplied under leases is recorded as a separate group by the lessor. Fixed assets supplied under leases are amortized according to the discounted value of lease payments.

On the expiration or termination of a lease agreement, if the leased asset is returned to the lessor, this asset remains in the same group without further depreciation until it is leased again.

The corporate income tax provisions effective before 1 January 2010 apply to assets leased before this date.

*Repair expenses for rented fixed assets.* Repair expenses that do not reduce rent payments for rented fixed assets constitute a separate group of assets that are depreciated at the rate set for Group 5. On the expiration or termination of a rent agreement, the remaining balance value for this group is annulled and may not be deducted from gross income.

**Relief for losses.** Enterprises may carry forward a loss incurred in a tax year to the following five tax years for offset against future profits. On request of a taxpayer, the loss carryforward period may be extended to 10 years. The statute of limitations changes from 6 years to 11 years if a 10-year carryforward period is selected by a taxpayer. A 10-year carryforward period can be changed to a 5-year carryforward period when the losses carried forward are used up.

International Financial Companies, Special Trade Companies and International Companies (see Section B) cannot carry forward losses.

Losses cannot be carried back.

**Groups of companies.** Consolidated returns of companies are not allowed. All companies must file separate tax returns. In addition, Georgian law does not contain any measures allowing members of a group to offset profits and losses.

**D. Other significant taxes**

The following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added tax (VAT); imposed on goods and services supplied in Georgia and on imported goods; reverse-charge VAT is imposed on works and services carried out in Georgia by nonresident entities	18
Property tax; on the average annual net book value of fixed assets	1
Property tax for leasing companies on leased assets	0.6

Georgia also imposes several other minor state and local taxes.

## E. Miscellaneous matters

**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. Enterprises may open bank accounts abroad without any restriction if they declare such accounts (other than deposit accounts) with the GTA within five working days after opening such accounts. In general, all transactions performed in Georgia must be performed in lari. Transactions with nonresident entities may be conducted in other currencies.

**Transfer pricing.** Under the transfer-pricing (TP) rules set by the TCG, the arm's length principle applies to transactions carried out by taxpayers with related parties. The TP rules generally apply to cross-border transactions between related parties. In special cases, these rules may also apply to transactions between related Georgian resident entities or to transactions between unrelated entities if one of the parties is a resident of a low-tax jurisdiction or offshore country or is registered in the Free Industrial Zone.

The generally accepted transfer-pricing methods include the following:

- Comparable uncontrolled price method
- Resale price method
- Cost-plus method
- Net profit margin method
- Profit split method

The Minister of Finance of Georgia is authorized to provide detailed descriptions of TP methods, their application rules and other procedural rules.

**Thin capitalization.** Thin-capitalization rules set by the TCG apply only to cases in which the Investigation Services of the Ministry of Finance of Georgia proves that thin capitalization is used as a deliberate tax-evasion mechanism.

Thin capitalization occurs when the debt-to-equity ratio exceeds 5:1. In the event of thin capitalization, a company may not deduct paid or payable interest expenses from its gross income. However, the thin-capitalization rules do not restrict the deduction of interest expenses on debt below the established ratio. Thin-capitalization rules do not apply to financial institutions, entities with annual gross income of GEL 200,000 or less or cases in which interest expenses do not exceed 20% of the taxable income before deduction of interest expenses.

The Minister of Finance of Georgia determines the thin-capitalization rules.

## F. Treaty withholding tax rates

Georgia has entered into tax treaties with 33 countries. The table below lists the withholding tax rates under these treaties. In general, if the withholding tax rate provided in a treaty exceeds the rate provided by the TCG, the latter rate applies.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Armenia	5/10 (a)	10	5
Austria	0/5/10 (b)	0	0
Azerbaijan	10	10	10
Belgium	5/15 (c)	0/10 (d)	5/10 (e)
Bulgaria	10	10	10
China	0/5/10 (b)	10	5
Czech Republic	5/10 (f)	0/8 (g)	0/5/10 (h)
Denmark	0/5/10 (i)	0	0
Estonia	5/15 (j)	10	10
Finland	0/5/10 (k)	0	0
France	0/5/10 (l)	0	0
Germany	0/5/10 (m)	0	0
Greece	8	8	5
Iran	5/10 (a)	10	5
Ireland	0/5/10 (n)	0	0
Italy	5/10 (f)	0	0
Kazakhstan	15	10	10
Latvia	5/10 (o)	10	10
Lithuania	5/15 (p)	10	10
Luxembourg	0/5/10 (q)	0	0
Malta	0	0	0
Netherlands	0/5/15 (r)	0	0
Poland	10	10	10
Qatar	0	0	0
Romania	8	10	5
Singapore	0	0	0
Spain	0/10 (s)	0	0
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	5/10 (a)	10	10
United Arab Emirates	0	0	0
United Kingdom	0/5/10 (t)	0	0
Uzbekistan	5/15 (u)	10	10
Nontreaty countries	5	5	15

- (a) The 5% rate applies if the actual recipient of the dividends is a company (other than a partnership) that holds directly at least a 25% share in the capital of the payer of the dividends. The 10% rate applies in all other cases.
- (b) The 0% 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 of the dividends and that has invested in the payer more than €2 million (or the equivalent amount in Georgian lari). The 5% rate applies if the beneficial owner is a company that holds directly or indirectly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 10% rate applies in all other cases.
- (c) 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 15% rate applies in all other cases.
- (d) The 0% rate applies if the recipient is the beneficial owner of interest on a commercial debt-claim, including a debt-claim represented by commercial paper, resulting from deferred payments for goods, merchandise or services supplied by an enterprise or if the recipient is the beneficial owner of interest on a loan that is represented by a bearer instrument and that is granted by a banking enterprise. The 10% rate applies in all other cases.
- (e) The 5% rate applies if the beneficial owner of the royalties is a legal entity. The 10% rate applies in all other cases.
- (f) 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. The 10% rate applies in all other cases.

- (g) The 0% rate applies if the recipient is the beneficial owner of interest on credit sales of industrial, commercial or scientific equipment. The 8% rate applies in all other cases.
- (h) The 0% rate applies if the recipient is the beneficial owner of royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, except for computer software and including cinematographic films, and films or tapes for television or radio broadcasting. The 5% rate applies if the recipient is the beneficial owner of royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate applies if the recipient is the beneficial owner of royalties paid for the use of, or the right to use, patents, trademarks, designs or models, planes, secret formulas or processes, computer software or information concerning industrial, commercial or scientific experience.
- (i) The 0% rate applies if the actual recipient of the dividends is a company that holds directly or indirectly at least 50% of the capital of the payer of the dividends and that has invested in the payer more than €2 million (or the equivalent amount in Danish krone or Georgian lari). The 5% rate applies if the actual recipient is a company that holds directly or indirectly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Danish krone or Georgian lari). The 10% rate applies in all other cases.
- (j) The 5% rate applies if the actual recipient 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 and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 15% rate applies in all other cases.
- (k) The 0% rate applies if the actual recipient of the dividends is a company (other than a partnership) that holds directly at least 50% of the capital of the payer of the dividends and that has invested in the payer more than €2 million (or the equivalent amount in Georgian lari). The 5% rate applies if the actual recipient is a company (other than a partnership) that holds directly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 10% rate applies in all other cases.
- (l) The 0% rate applies if the actual recipient of the dividends is a company that holds directly or indirectly at least 50% of the capital of the payer of the dividends and that has invested in the payer more than €3 million (or the equivalent amount in Georgian lari). The 5% rate applies if the actual recipient is a company that holds directly or indirectly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 10% rate applies in all other cases.
- (m) The 0% rate applies if the actual recipient of the dividends is a company (other than a partnership) that holds directly at least 50% of the capital of the payer of the dividends and that has invested in the payer more than €3 million (or the equivalent amount in any currency). The 5% rate applies if the actual recipient is a company (other than a partnership) that holds directly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in any currency). The 10% rate applies in all other cases.
- (n) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 50% of the voting rights in the payer of the dividends and that has invested in the payer at least €3 million (or the equivalent amount in Georgian lari). The 5% rate applies if the beneficial owner is a company that holds directly or indirectly at least 10% of the voting rights in the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 10% rate applies in all other cases.
- (o) 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 and that has invested in the payer more than US\$75,000. The 10% rate applies in all other cases.
- (p) 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 and that has invested in the payer at least €75,000. The 15% rate applies in all other cases.
- (q) The 0% rate applies if the actual recipient of the dividends is a company that holds directly or indirectly at least 50% of the capital of the payer of the dividends and that has invested in the payer more than €2 million (or the equivalent amount in Georgian lari). The 5% rate applies if the actual recipient is a company that holds directly or indirectly at least 10% of the capital of the payer of the dividends and that has invested in the payer more than €100,000 (or the equivalent amount in Georgian lari). The 10% rate applies in all other cases.

- (r) The 0% 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 of the dividends and that has invested in the payer more than US\$2 million (or the equivalent amount in euros or Georgian lari). The 5% rate applies if the recipient is a company that holds at least 10% of the capital of the payer of the dividends. The 15% rate applies in all other cases.
- (s) The 0% 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 company paying the dividends. The 10% rate applies in all other cases.
- (t) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 50% of the voting rights in the payer of the dividends and that has invested in the payer at least £2 million (or the equivalent amount in Georgian lari). The 5% rate applies if the beneficial owner is a company that holds directly or indirectly at least 10% of the voting rights in the payer of the dividends. The 10% rate applies in all other cases.
- (u) The 5% rate applies if the actual recipient 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 15% rate applies in all other cases.

Georgia has signed and ratified tax treaties with Egypt, Israel, Kuwait and Switzerland, but these treaties are not yet in force.

Tax treaties have been initialed with Bahrain, Cyprus, Hungary, India, Norway, Portugal, the Slovak Republic and Slovenia.

Tax treaty negotiations are underway with Argentina, Belarus, Brazil, Croatia, Iceland, Jordan, Korea (South), Liechtenstein, the Marshall Islands, Mexico, Panama, Serbia, Sweden and Syria.

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**A. At a glance**

Corporate Income Tax Rate (%)	15 (a)(b)
Trade Tax Rate (Average Rate) (%)	14 (c)
Capital Gains Tax Rate (%)	15 (a)(b)
Branch Tax Rate (%)	15 (a)(b)
Withholding Tax (%) (b)(d)	
Dividends	25 (e)(f)
Interest	0 (g)(h)
Royalties from Patents, Know-how, etc.	15 (h)(i)(j)
Remuneration to Members of a Supervisory Board	30 (j)
Payments for Construction Work	15
Branch Remittance Tax	0

## Net Operating Losses (Years)

Carryback	1 (k)
Carryforward	Unlimited (l)

- (a) The 2008 Business Tax Reform reduced the corporate income tax rate from 25% to 15% for the 2008 tax year and future tax years.
- (b) A 5.5% solidarity surcharge is imposed (see Section B).
- (c) Effective from 1 January 2008, the trade tax base rate was reduced from 5% to 3.5%. Accordingly, the average trade tax rate was reduced from around 17% to 14%. However, trade tax is no longer deductible as a business expense for both corporate income and trade tax purposes.
- (d) On application, these rates may be reduced by tax treaties.
- (e) This withholding tax applies to dividends paid to residents and nonresidents. Under the 2009 Annual Tax Act, for dividends paid to nonresident corporate entities, this rate may be reduced to 15% if the nonresident dividend recipient qualifies under the German anti-treaty shopping rules.
- (f) These rates may be reduced under the European Union (EU) Parent-Subsidiary Directive. Under the EU Parent-Subsidiary Directive, on application, a withholding tax rate of 0% applies to dividends distributed by a German subsidiary to an EU parent company if the recipient has owned 10% or more of the share capital of the subsidiary for a continuous period of 12 months at the time the dividend distribution takes place and if the German anti-treaty shopping rules do not apply.
- (g) A 25% interest withholding tax is imposed on the following types of interest:
- Interest paid by financial institutions. The rate is 15% if the loan is not recorded in a public debt register.
  - Interest from over-the-counter business. Over-the-counter business refers to bank transactions carried out over the bank counter, without the securities being on deposit at the bank.
  - Interest from certain types of profit-participating and convertible debt instruments.
- The interest withholding tax is not imposed on intercompany loans. Nonresidents may apply for a refund of the withholding tax if a treaty exemption applies. If a nonresident is required to file an income tax return in Germany, the withholding tax is credited against the assessed corporate income tax or refunded.
- (h) These rates may be reduced by tax treaties or under the European Union (EU) Interest-Royalty Directive. Under the EU Interest-Royalty Directive, on application, German withholding tax is not imposed on interest and royalties paid by a German resident company to an associated company located in another EU member state. To qualify as associated companies, a minimum 25% shareholding or a common parent is required, among other requirements.
- (i) The withholding tax rate on royalties from patents, know-how and similar items is 15% for payments to nonresident corporations.
- (j) This withholding tax applies to payments to nonresidents only.
- (k) 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.
- (l) 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 €1 million for each tax plus 60% of annual taxable income exceeding €1 million (so-called minimum taxation). The carryforward is subject to the change-of-ownership rule (see Section C).

## B. Taxes on corporate income and gains

**Corporate income tax.** Corporations, such as stock corporations (Aktiengesellschaft, or AG) and limited liability companies (Gesellschaft mit beschränkter Haftung, or GmbH), that have their corporate seat or place of management in Germany (resident corporations) are subject to corporate income tax (Körperschaftsteuer) 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. Income from German sources 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 imposed at a rate of 15% on taxable income, regardless of whether the income is distributed or retained.

A 5.5% solidarity surcharge is imposed on corporate income tax, resulting in an effective tax rate of 15.825%. Prepayments of corporate income tax and withholding tax payments are also subject to this surcharge.

Companies that continue to have a corporate income tax credit balance resulting from retained earnings taxed in the years for which the imputation tax credit system applied (generally, 2000 and earlier years) receive a refund of this remaining balance in 10 equal amounts during the period of 2008 through 2017.

Companies that continue to have untaxed equity (known as “EK 02”) made up of various amounts of tax-free income generated in the years for which the imputation tax credit system applied (generally, 2000 and earlier years) must pay tax on this untaxed equity at a rate of 3%. Companies must pay this amount of additional tax in 10 equal installments from 2008 to 2017 or as a one-time payment on a discounted basis.

**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 debt, a 6.25% add-back for license payments, a 5% add-back of lease payments for movable assets and a 12.5% add-back of lease payments for immovable assets (the 12.5% rate is effective from 1 January 2010; the prior rate was 16.25%). Effective from the 2008 tax year, the base rate imposed by the trade tax law (to which a multiplier set by the municipality is applied) was reduced from 5% to 3.5%. The municipalities may not increase their local multiplier. As a result, the effective average trade tax rate was reduced from approximately 17% to 14%. Taking into account the various municipality multipliers, the combined average tax rate for corporations (including corporate income tax, solidarity surcharge and trade tax) ranges from approximately 23% to 33% (for tax years before 2008, the range was 33% to 41%). The combined effective tax burden is also affected by various changes with respect to the determination of the tax base, such as 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 specified banks and real estate companies, receive privileged treatment under the trade tax law.

**Withholding tax on construction work.** Value-added tax (VAT; see Section D) taxpayers and entities that are corporate under public law (for example, cities and municipalities) must withhold a tax of 15% from payments made for construction work provided in

Germany. 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 the following four years and if certain other conditions are met.

Capital gains derived by corporations from sales of shares in corporations are generally exempt from corporate income tax and trade tax. Because 5% of the capital gain is deemed a nondeductible expense the exemption is effectively limited to 95% of the capital gain. This also applies to nonresident corporate sellers if they have owned at least 1% of the capital stock of a German company at any time during the five years preceding the sale and if the nonresident seller cannot claim treaty protection.

The 95% tax exemption for capital gains received by a corporate shareholder is not granted to banks, financial services institutions and financial enterprises (including holding companies) that purchase shares with the intention of realizing short-term profits for their own account.

However, to the extent that write-downs of the shares have previously been deducted, capital gains from sales of shares are not exempt.

If the shares were acquired before 2007 through a tax-free contribution of a qualifying business or a partnership interest in exchange for shares, a seven-year holding period is required to qualify for the capital gain exemption. The exemption does not apply to capital gains derived from sales of shares that were acquired before 2007 in a tax-free exchange for shares which, in turn, were acquired through a tax-free contribution of a qualifying business or a partnership interest within a period of seven years before the sale.

German corporations that received shares below fair market value through contributions to capital by individuals before 2007 are also subject to income tax on capital gains derived from the sales of these shares within seven years after the date of the contribution.

In general, capital losses are deductible. However, capital losses are not deductible if a gain resulting from the underlying transaction would have been exempt from tax. Consequently, capital losses from sales of shares or write-downs on shares are not deductible. 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 by 31 May of the year following the tax year. However, an extension to 31 December of the year following the tax year is usually granted if a licensed tax consultant prepares the return.

Payments made with respect to 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 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 and tax refunds are generally subject to interest of 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 and trade 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 corporations and branches of nonresident corporations from their German and foreign subsidiaries are exempt from tax. German tax law does not impose either a minimum shareholding requirement or a minimum holding period requirement for qualification for this participation exemption. In addition to this domestic rule, an applicable tax treaty may provide an exemption for foreign dividends.

Five percent of the tax-exempt dividend income is treated as a nondeductible expense, while the expenses actually accrued are deductible. Consequently, only 95% of the dividends received by a corporation is effectively exempt from tax. The 95% tax exemption for dividends received by a corporate shareholder is not granted to banks, financial services institutions and financial enterprises (including holding companies) that purchase shares with the intention of realizing short-term profits for their own account.

The participation exemption applies for trade tax purposes if the dividends are received from corporations in which the parent holds at least 15% as of 1 January of the calendar year in which the dividend distribution takes place. For dividends from EU corporations, the required minimum shareholding is 10%. For dividends of third-country corporations, the shares (minimum shareholding of 15%) must be held continuously since 1 January of the calendar year in which the dividend distribution takes place and the subsidiary's gross income must be realized exclusively or almost exclusively from active business. A tax exemption on the basis of a double tax treaty may apply for trade tax purposes.

**Foreign tax relief.** Under German domestic tax law, income from foreign sources, except for foreign intracorporate dividends (see *Dividends*), is usually taxable, with a credit for the paid foreign income taxes, up to the amount of German tax payable on the foreign-source income, subject to per-country 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. In general, German tax treaties provide for 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 filed with 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 and 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 company's own research and development and start-up and formation expenses may not be capitalized for tax purposes. They must be currently expensed. However, a company's own research and development expenses directly related to the production of goods may be capitalized as inventories in certain circumstances.

**Inventories.** Inventory is basically valued at acquisition cost or production cost, unless a lower value, in terms of the lower of reproduction or repurchase cost and market value, is indicated. Under certain conditions, the last-in, first-out (LIFO) method can be used to value inventory assets if the assets are of a similar type.

**Provisions.** In general, provisions established under German GAAP are accepted for tax purposes. However, in past 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 be recorded only when the condition occurs.
- Provisions for foreseeable losses from open contracts may not be capitalized.
- Future benefits arising in connection with the fulfillment of an obligation must be offset against costs resulting from the obligation.
- Nonmonetary obligations may be accrued using the direct cost and the necessary indirect cost.
- Provisions for obligations resulting from the operation of a business must be built up in equal increments over the period of operation.
- 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.** For movable assets purchased or produced after 31 December 2007, tax depreciation must be calculated using the straight-line method (as an exception, the declining-balance method may be applied for movable assets purchased or manufactured between 1 January 2009 and 31 December 2010). Useful

lives of movable assets are published by the Federal 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 12.5
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*

\* The rate is 4% if the application for the construction permit was filed or the purchase agreement was dated before 1 January 2001.

**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 (however, write-downs of shares are not tax effective; see Section B). 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 need to be made to calculate taxable income. Major adjustments include the following nondeductible expenses:

- Income taxes (corporate income tax, solidarity surcharge and trade tax) and any interest expense paid with respect to these taxes
- Interest expenses (see *General interest expense limitation*)
- Penalties
- Fifty percent of supervisory board fees
- Thirty percent of entertainment expenses
- Gifts to non-employees exceeding €35 per person per year and input VAT regarding such expenses
- Expenses incurred in direct connection with tax-exempt income items (see the discussion of dividends in Section B)

In addition, as a result of the exemption for capital gains derived from sales of shares (see Section B), losses from sales of shares, write-downs of shares or, under certain circumstances, write-downs on loans to related parties are no longer deductible for tax purposes and must be added back to the tax base.

**General interest expense limitation.** The 2008 Business Tax Reform replaced the thin-capitalization rules with an interest expense limitation rule. This interest expense limitation rule applies to all loans (that is, group and third-party loans, regardless of recourse). The new rule, which is effective for tax years beginning after 25 May 2007 and ending after 1 January 2008, applies to businesses resident in Germany, companies residing abroad but maintaining a permanent establishment in Germany and partnerships with a German branch.

Under the interest expense limitation rule, the deduction of interest expense exceeding interest income (net interest expense) is limited to 30% of taxable earnings before (net) interest, tax, depreciation and amortization (EBITDA). Tax-exempt income and partnership income are not considered in the calculation of the taxable EBITDA.

The limitation rule does not apply if one of the following exemption rules applies:

- Exemption threshold. The annual net interest expense is less than €3 million.
- Group clause. 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 group clause does not apply if both of the following circumstances exist:
  - A shareholder who, directly or indirectly, holds more than 25% in the corporation or a related party of such shareholder grants a loan to the company.
  - The interest exceeds 10% of the company's net interest expense.
- Escape clause. The equity ratio of the German subgroup is at least as high as the equity ratio of the worldwide group (within a 2% margin). 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 equity ratio is calculated on the basis of the IFRS/US GAAP/EU local country GAAP consolidated balance sheet of the ultimate parent. The same accounting standard is applied to a German group but subject to several complex technical adjustments, such as a deduction for unconsolidated subsidiaries. The access to the escape clause is limited in the case of certain loans from non-consolidated shareholders (related party debt exception).

Unused EBITDA can be carried forward over a five-year period. The EBITDA carryforward can be applied for accounting periods ending after 31 December 2009. On request, it is possible to determine the EBITDA carryforward from previous periods (2007 to 2009). However, the carryforward does not apply if one of the above-mentioned exemptions from the interest expense limitation rule applies. The EBITDA carryforward is forfeited in the course of reorganizations but not under the loss-trafficking rules (see *Tax losses*).

Nondeductible interest expense can be carried forward indefinitely but is subject to the loss-trafficking rules (see *Tax losses*). A deduction is possible in the following years in accordance with the interest expense limitation rules. The nondeductibility is final in the

case of a transfer, merger, termination or liquidation of the business or in the case of a permanent excess of limitation amounts (that is, net interest expense is permanently higher than 30% of the taxable EBITDA and the exemption clauses are not fulfilled; as a result, the deduction of all of the interest expense is permanently not achievable).

**Constructive distributions of income.** Adjustments to taxable income as a result of a violation of arm's length principles are deemed to be constructive distributions of income (see the discussion of transfer pricing in Section E).

**Tax losses.** Tax losses may be carried forward without time limitation. Effective for fiscal years ending after 31 December 2003, restrictions to loss utilization apply. Under these restrictions, only 60% of annual taxable profits in excess of €1 million can be offset by loss carryforwards (so-called minimum taxation). As a result, 40% of the portion of profit exceeding €1 million is subject to tax. This tax loss carryforward rule applies for both corporate income tax purposes and trade tax purposes.

For corporate income tax (not trade tax) purposes, an optional loss carryback is permitted for one year up to the maximum amount of €511,500.

The 2008 Business Tax Reform introduced a new loss-trafficking rule applicable to transactions after 31 December 2007. For ownership changes made before 1 January 2008, the old rules also apply concurrently for a transition period of five years. Under the new loss-trafficking rule, tax loss carryforwards are forfeited proportionally if, within a five-year period, more than 25% of the shares of a loss-making entity are directly or indirectly transferred to a single new shareholder or a group of shareholders. If, within a five-year period, more than 50% of the shares are transferred, the entire loss carryforward is forfeited. To prevent abuse of the rule, the new rule includes a measure under which investors with common interests and acting together are deemed to be one acquirer for the purposes of the rule.

The following exceptions apply to the loss-trafficking rule:

- **Insolvency restructuring exception.** For share transfers after 31 December 2007, the loss-trafficking rule does not apply if the intention for the transfer of the shares is the removal or prevention of the insolvency or overindebtedness of the loss-making company and if the structural integrity of the company remains unchanged. The application of the exception is currently suspended because the European Commission considers the exception to be unlawful state aid. Several cases brought by taxpayers are pending at the European Court of Justice.
- **Group restructuring exception.** For share transfers after 31 December 2009, a transfer of shares is not considered to be harmful if, after a direct or indirect transfer, "the same person" owns directly or indirectly 100% of the transferor and transferee.
- **Built-in gain exception.** For harmful share transfers after 31 December 2009, a loss carryforward is not forfeited up to the amount of built-in gains to the extent that these built-in gains are taxable in Germany. Consequently, built-in gains allocable to subsidiaries are not taken into account; see the discussion of capital gains and losses in Section B.

Loss carryforwards are also forfeited in the course of a merger, change of legal form and liquidation of the loss-making company.

**Groups of companies.** German tax law provides a tax consolidation for a German group of companies (Organschaft), which allows losses of group companies to be offset against profits of other group companies. Only German companies in which the German parent company directly or indirectly holds the majority of the voting rights at the beginning of the fiscal year of the subsidiary may be included (this requirement is known as financial integration). A tax consolidation may cover corporate income tax, trade tax and 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) for a minimum period of five years. Partnerships and branches do not qualify as subsidiaries in an Organschaft.

The head of an Organschaft must have its place of management in Germany. An Organschaft subsidiary must have its place of management and its legal seat in Germany. In the case of an EU/EEA subsidiary, only the place of management in Germany is required.

A nonresident company may become the head of an Organschaft if the following requirements are met:

- 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.
- The investments in the German subsidiaries are assets of the German branch.

The Organschaft for VAT requires the following:

- Financial integration (see above).
- Economic integration of the lower-tier entities. Economic integration exists if the business activities of the members of the group complement each other.
- Integration in organizational matters. Organizational integration exists if the group parent is able to impose its will on the group members and does so in the day-to-day business.

In contrast to the other Organschaft forms, Organschaft for VAT can begin and end during the course of the fiscal year.

#### **D. Other significant taxes**

The following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Real property tax, on assessed standard value of real property; rate varies by municipality	0.5 to 2.8
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 the title to domestic real property	

Nature of tax	Rate (%)
(however, a group exception may apply); levied on the purchase price of the 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	
General rate (Bavaria, Hesse, Mecklenburg-West Pomerania and Saxony)	3.5
Rate for real estate located in Saarland	4
Rate for real estate located in Berlin, Bremen, Hamburg, Lower Saxony and Saxony-Anhalt	4.5
Rate for real estate located in Baden-Württemberg, Brandenburg, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein and Thuringia	5
Value-added tax (VAT or Umsatzsteuer); on application, foreign enterprises may receive refunds of German VAT paid if they are neither established nor registered for VAT purposes in Germany; this application must be filed by non-EU enterprises by 30 June and by EU enterprises by 30 September, in the year following the year in which the invoice was received by the claimant)	
Standard rate	19
Reduced rate	7

## E. Miscellaneous matters

**Foreign losses.** In principle, 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, these 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.

Based on German Federal Court decisions, an EU branch's losses are, in principle, deductible in Germany if the losses cannot be utilized for actual reasons in the respective EU country. These so-called final losses are allowed, for example, if the branch is sold or transferred to another company, closed down or converted into a corporation. However, losses do not qualify as final if they cannot be utilized in the EU country because they are forfeited or have expired under the EU country's loss carryforward regulations.

**Foreign-exchange controls.** No controls are imposed on the transfer of money in and out of Germany. However, specific reporting requirements for certain transactions must be met.

**Debt-to-equity rules.** The interest expense limitation rule (see Section C) replaced the former thin-capitalization rules.

**Antiavoidance legislation.** Several tax laws contain antiavoidance legislation. The Corporate Income Tax Act deals with constructive dividends by corporations, both in Germany and abroad. The Foreign Transactions Tax Act deals with all kinds of related or affiliated taxpayers, such as individuals, partnerships and corporations, and is restricted to cross-border transactions. It contains extensive provisions on controlled foreign company (CFC) and

passive foreign investment company income. The General Tax Code contains a general antiabuse 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 Act provides antiabuse rules that are aimed at preventing the unjustified reduction of German withholding taxes under a tax treaty, under the EU Parent-Subsidiary Directive or under the EU Interest-Royalty Directive (treaty or directive shopping). The 2007 Annual Tax Act tightened the so-called “anti-treaty shopping” rule and imposed an increased substance requirement for foreign receiving entities. Effective from 1 January 2012, the German anti-treaty-shopping rule is changed to conform with EU law. However, the increased substance requirement must still be fulfilled (see Section F).

Germany’s newer tax treaties include “switch-over” clauses as well as “subject-to-tax” clauses.

**Transfer pricing.** 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 contributions and a specific adjustment provision in the CFC legislation. All of the measures mentioned in the preceding sentence are based on the arm’s length principle.

The Foreign Transactions Tax Act now expressly provides that the preferential basis for determining the transfer price is 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. Effective from 1 January 2008, a special set of rules directed at securing the German tax revenue have been incorporated into the code. These rules deal with the determination of transfer prices in the event of a transfer of business functions abroad.

Specific documentation rules apply for transfer-pricing purposes. On request of a tax auditor, the taxpayer is required to submit the transfer-pricing documentation within 60 days (in the case of extraordinary business transactions, within 30 days). Noncompliance with these rules may result in a penalty of €100 per day of delay up to a maximum of €1 million. If no documentation is provided or if the documentation is unusable or insufficient, a surcharge of 5% to 10% of the income adjustment is applied with a minimum surcharge of €5,000.

**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, an 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 for at least 75% of its gross assets.
- Rental income from real estate accounts for at least 75% of its total income.
- 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 Act (Section 43b ITA).

The 2007 Annual Tax Act tightened the domestic antiabuse rule (Section 50 d III ITA). The benefits under the treaties or under the EU directive for a foreign recipient of dividends, interest or royalties are not granted if the following conditions are met:

- The parent company of the receiving entity does not fulfill the requirements for tax relief under the tax treaty or the EU directive, and no economic or other substantial reasons for the interposition of the receiving entity exist (business purpose test).
- The foreign receiving entity does not realize at least 10% of its total gross profits per year from its own economic activities (10% gross receipts test).
- The foreign receiving entity does not participate in the commercial market in appropriately equipped business premises with fully equipped business facilities (substance test).

On 18 March 2010, the European Commission formally requested that Germany change its antiabuse rule because it considers the 10% threshold requirement to be disproportionate, with no possibility of providing evidence to the contrary.

Under new legislation, which is effective from 1 January 2012, the 10% threshold condition is replaced by a provision on the burden of proof. Under the new rule, the tax relief is denied if and to the extent that the foreign company does not earn its gross income from its own economic activities and if at least one of the following two conditions is met:

- For income not resulting from the foreign company's own economic activity, no economic or other relevant reason exists to interpose the foreign company.
- The foreign company does not participate in the general marketplace with appropriately equipped business premises.

In addition, a foreign company not earning its gross income from its own economic activities has the burden of proof that the above-mentioned conditions are not met and, as a result, the withholding tax relief should be granted; that is, the foreign company has the burden of proof with respect to the existence of economic or other relevant reasons for its interposition and the burden of proof with respect to its business substance. If a foreign company earns its gross income from genuine economic activities, no business purpose test or substance test as mentioned above is required for the application of the tax relief under a treaty or an EU directive. If a foreign company earns income from both genuine economic activities and non-genuine economic activities and if, with respect to the non-genuine business activities, the business purpose and substance tests are met, the foreign company can obtain tax relief under EU law and/or the applicable tax treaty, regardless of the fulfillment of any percentage threshold for the income from genuine economic activities. If either of the conditions is not met, then the relief is denied for the income from non-genuine economic activities.

	<b>Dividends (1)</b>	<b>Interest (2)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Algeria	5 (y)	10 (e)	10
Argentina	15 (c)	15 (d)(e)(f)	15
Australia	15	10 (e)	10
Austria	0 (y)(jj)	0	0
Azerbaijan	5 (c)(y)	10 (d)(o)	5/10 (oo)
Bangladesh	15 (c)	10 (d)(e)	10
Belarus	5 (c)(y)	5 (d)(e)(f)	3 (t)
Belgium	0 (jj)	15 (h)	0
Bolivia	10 (c)	15 (d)(e)	15
Bulgaria	0 (c)(y)(jj)	0 (d)	5
Canada	5 (c)(y)	10 (d)(e)(i)	10 (q)(r)
China (u)	10 (c)	10 (d)(e)	10 (r)
Côte d'Ivoire	15 (c)	15 (d)(e)	10
Croatia	5 (c)(y)	0 (d)	0
Cyprus	0 (y)(jj)	0	0
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	0 (c)(y)(jj)	10 (d)(e)	10 (r)
Finland	0 (c)(y)(jj)	0 (d)	5 (t)
France	0 (c)(y)(jj)	0 (d)	0
Georgia	0 (c)(y)	0 (d)	0
Ghana	5 (c)(y)	10 (d)(e)	8
Greece	0 (jj)	10 (e)	0 (n)
Hungary	0 (c)(y)(jj)	0 (d)	0
Iceland (ss)	5 (y)	0	0
India	10 (c)	10 (d)(e)	10
Indonesia	10 (c)(y)	10 (d)(e)	15 (cc)(ff)
Iran	15 (y)	15 (e)	10
Ireland	0 (a)(jj)	0 (a)	0 (a)
Israel	25 (a)(pp)(qq)	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 (d)(e)	10
Kazakhstan	5 (c)(y)	10 (d)(e)(mm)	10
Kenya	15	15 (e)	15
Korea (South)	5 (c)(y)	10 (d)(e)	10 (r)
Kuwait	5 (c)(y)	0 (d)	10
Kyrgyzstan	5 (c)(y)	5 (d)(e)	10
Latvia	0 (c)(y)(jj)	10 (b)(d)(e)	10 (r)
Liberia	10 (y)	20 (e)(k)	10 (v)
Liechtenstein	0 (tt)	0	0
Lithuania	0 (c)(y)(jj)	10 (b)(d)(e)	10 (r)
Luxembourg (ee)(ss)	0 (y)(jj)	0	5
Macedonia	5 (c)(y)	5 (d)	5
Malaysia	5 (c)(y)	10 (d)	7
Malta	0 (c)(y)(jj)	0 (d)	0
Mauritius	5 (y)	0	10
Mexico	5 (c)(y)	10 (d)(e)(kk)	10
Mongolia	5 (c)(y)	10 (d)(e)	10
Morocco	5 (a)(y)	10 (a)(e)	10 (a)
Namibia	10 (c)(y)	0 (d)	10
Netherlands	0 (y)(jj)	0 (g)	0
New Zealand	15 (c)	10 (d)(e)	10

	<b>Dividends (1)</b>	<b>Interest (2)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Norway	0 (c)(y)	0 (d)	0
Pakistan	10 (c)(y)	20 (d)(e)(k)	10
Philippines	10 (c)(y)	15 (d)(e)(f)	10 (w)
Poland	0 (c)(y)(jj)	5 (d)(e)	5
Portugal	0 (c)(jj)	15 (d)(e)(k)	10
Romania	0 (c)(y)(jj)	3 (d)(e)	3
Russian Federation	5 (c)(y)	0 (d)	0
Singapore	5 (y)	8 (e)	8
Slovenia	0 (y)(jj)	5 (d)(e)	5
South Africa	7.5 (y)(dd)	10 (a)	0 (a)
Spain	0 (c)(y)(jj)	0 (d)	0
Sri Lanka	15 (c)	10 (d)(e)	10
Sweden	0 (c)(jj)	0 (d)	0
Switzerland	0 (c)(y)(z)	0 (d)(z)	0
Syria	5 (c)(y)	10 (d)	12
Tajikistan	5 (c)(y)	0 (d)	5 (oo)
Thailand	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 (rr)	5 (c)(y)	10 (d)	10
Ukraine	5 (c)(y)	5 (b)(d)(e)	5 (l)
USSR (hh)	15 (c)	5 (d)(e)	0
United Arab Emirates	5 (c)(y)	0 (d)	10
United Kingdom (s)	0 (a)(c)(y)(jj)	0 (a)(d)	0 (a)
United States	0 (c)(y)(aa)	0 (d)	0 (w)
Uruguay	15 (c)	15 (d)(e)	15 (ff)
Uzbekistan	5 (c)(y)	5 (d)(e)	5 (r)
Venezuela	5 (c)(y)	5 (d)(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	25 (pp)(qq)	0/15/25 (j)(qq)	15 (qq)

- (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 financial institutions, on interest from over-the-counter business and on interest payments on convertible and profit-sharing bonds and participating loans (for details, see footnote (g) to Section A). 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 on the filing of a tax return. 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% (reduced on application for refund to 15% if the recipient is a corporation and if the German anti-treaty shopping rules do not apply).
  - (d) Interest on participating loans and profit-sharing bonds is taxed at 25% (reduced on application for refund to 15% if the recipient is a corporation and if the German anti-treaty shopping rules do not apply).

- (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 (0% under the Belarus treaty) 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.
- (g) Interest on convertible bonds and profit-sharing bonds is taxed at 15%.
- (h) Interest paid to an enterprise is exempt from withholding tax if either of the following applies:
- The recipient is a company owning more than 25% of the paying company.
  - The interest is derived from bonds other than 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 15% (25% until 2007) corporate income tax rate.
- (k) Interest payments to banks or on loans granted by banks may be subject to a 10% withholding tax rate.
- (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 25%.
- (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 with respect to the use of technical, commercial or scientific equipment, the rate is reduced to 0% under the Canada treaty, 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) Germany and the United Kingdom have entered into a new treaty, which is effective from 1 January 2011.
- (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 of, or the right to use, copyrights of literary and artistic works, including films, television and broadcasts.
- (u) This treaty does not apply to the Hong Kong and Macau SARs. Germany has agreed on a new double tax treaty with China. However, the content will not be published until after the treaty is signed.
- (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% (Estonia, Mongolia, Switzerland, Syria, Ukraine and United Arab Emirates, 10%; Georgia, 5%/10%; United States, 5%/15%; Vietnam, 10%/15%; Iran, Thailand, Trinidad and Tobago and Zimbabwe, 20%) if the recipient is not a corporation owning at least 25% (Algeria, Austria, Bulgaria, Canada, Croatia, Cyprus, Denmark, France, Ghana, Hungary, Kuwait, Macedonia, Malaysia, Malta, Mauritius, Mexico, Mongolia, Namibia, Poland, Romania, Russian Federation, Singapore, Spain, Syria, Tajikistan, United Arab Emirates and United Kingdom, 10%; Georgia, 10%/50%; United States, 10%/80%; Venezuela, 15%; Belarus, Pakistan, Switzerland and Ukraine, 20%; Vietnam, 70%/25%) of the distributing corporation or if the participation does not have a specific value

(Azerbaijan €150,000; Belarus €81,806.70; Georgia €3,000,000/€100,000). Under the treaty with the United Arab Emirates, a tax rate of 15% applies to real estate investment corporations that are not or only partially subject to tax.

- (z) A 0% rate may apply under the EU-Switzerland treaty.
- (aa) The United States treaty provides for a 0% rate if the participation is at least 80% for a period of 12 months and if the conditions of the Limitation of Benefit test under Article 28 are fulfilled.
- (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.
- (hh) Germany honors the USSR treaty with respect to all former Soviet republics except for Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, the Russian Federation and Ukraine. This has been acknowledged by Armenia, Moldova and Turkmenistan. Germany has entered into tax treaties with Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, 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 Turkmenistan.
- (ii) The treaty with the former Yugoslavia applies to Bosnia-Herzegovina, Kosovo, Montenegro and Serbia. Germany has entered into tax treaties with Croatia, Macedonia and Slovenia. The tax rates under these treaties are listed in the table above.
- (jj) Dividends distributed by a German subsidiary to an EU parent company are exempt from withholding tax if the recipient owns 10% (15% for the 2007 and 2008 tax years) 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% (Finland, Luxembourg and Netherlands, 10%) if the recipient owns at least 10% (Czechoslovakia, Estonia, Finland, Italy, Latvia, Lithuania, Luxembourg, Netherlands and Slovenia, 25%) of the distributing company.
  - For Belgium, Czechoslovakia, Greece, Italy, Portugal and Sweden, the withholding tax rate increases to 15% (Ireland, 10%; Greece, 25%) for all shareholdings (under the Sweden treaty, only for shareholdings of less than 10%). Under the United Kingdom treaty, a rate of 10% applies for dividend payments to pension schemes.
- (kk) The rate is 5% for interest on loans granted by banks.
- (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
  - Royalties for the use of, or the right to use, 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) Under the 2009 Annual Tax Act, the rate may be reduced to 15% if the nonresident dividend recipient qualifies under the German anti-treaty shopping rules.

- (qq) A 5.5% solidarity surcharge applies.
- (rr) The prior tax treaty with Turkey was cancelled, effective from 1 January 2011. Germany and Turkey have entered into a new treaty, which is effective retroactively from 1 January 2011.
- (ss) Agreement has been reached on a new tax treaty, but the content has not yet been published.
- (tt) The 0% rate applies to corporations if, at the time the dividend distribution takes place, the recipient has held a direct and continuous shareholding of at least 10% of the voting rights for the last twelve months. The withholding tax rate is increased to 5% if the corporation does not fulfill the requirement of 10% of the voting rights for the last twelve months before the dividend distribution. However, on application, the 5% tax can be refunded if the requirement of 10% of the voting rights for a continuous twelve months is fulfilled after the dividend distribution has taken place. A 15% withholding tax rate applies in all other cases.

Germany has initialed new tax treaties with Belgium, China, Costa Rica, Egypt, Finland, France, Greece, Iceland, Ireland, Israel, Liechtenstein, Luxembourg, Mauritius, the Netherlands, Norway, Oman, Slovenia, South Africa, Spain, Tunisia and Turkey.

Germany is negotiating or renegotiating tax treaties with Argentina, Australia, Colombia, Croatia, Ecuador, Georgia, India, Indonesia, Iran, Italy, Japan, Jordan, Libya, Macedonia, Morocco, Portugal, Qatar, Serbia, Singapore, Sri Lanka, Turkmenistan, Ukraine and Venezuela.

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## Ghana

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## A. At a glance

Corporate Income Tax Rate (%)	25
Capital Gains Tax Rate (%)	15
Branch Tax Rate (%)	25
Withholding Tax (%) (a)	
Dividends	8 (b)
Interest	8 (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 export. 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-for-export 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%. However, various other tax rates apply to income derived from specified business activities.

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 a 10-year period of exemption.

For petroleum extracting companies, the tax rate is 50%. However, petroleum agreements signed with the government of Ghana provide for a 35% tax rate. 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 affordable low-cost residential premises for lease 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.

<b>Location</b>	<b>Rate (%)</b>
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-General of the Ghana Revenue Authority (GRA) 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 agroprocessing 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 15%. Capital losses do not offset capital gain and may not be carried forward.

Capital gains tax is imposed on gains derived from the disposal of the following assets:

- Buildings.
- Businesses and business assets, including goodwill. However, the following assets are excluded:
  - Assets acquired in mergers, amalgamations and reorganizations of companies if continuity of underlying ownership in the assets of at least 25% exists.
  - Trading stock.
  - Classes 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 the 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
- Expenditure relating or incidental to the disposal of the 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 GH¢50.

**Administration.** The Ghana Revenue Authority (GRA) 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-General of the GRA. The Commissioner-General 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 be charged a penalty in addition to the tax payable. Failure to pay tax for a period of not more than three months results in a penalty of 10% of the tax payable. Failure to pay tax for a period exceeding three months results in a penalty of 20% of the tax payable.

Companies that fail to pay by the due date any tax that they are required to withhold and pay to the Commissioner-General may be liable for a penalty in addition to the tax payable. Companies that fail to pay the withheld tax for a period of not more than three months are liable to a penalty equal to 20% of the tax payable. Failure to pay the withheld tax for periods exceeding three months may result in a penalty equal to 30% of the tax payable.

**Dividends.** An 8% withholding tax is imposed on dividends paid to residents and nonresidents without a permanent establishment in Ghana. This is a final tax.

**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 entities' 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, machinery and fixtures
- Bad debts (see *Provisions*)
- Research and development expenditure
- Foreign-exchange losses (see *Foreign-exchange gains and losses*)

If the Commissioner-General of the GRA believes that profits reported by a local subsidiary of a nonresident company are unrealistic, the Commissioner-General 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 an antiavoidance rule 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-General of the GRA 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.** Inventories may be accounted for using the first-in, first-out (FIFO) method or the average-cost method. After a company selects one of these methods, it must use the same method consistently from period to period. A company can change the method only with the written permission of the Commissioner-General of the GRA.

**Provisions.** Bad debts incurred in business are deductible if the company proves to the satisfaction of the Commissioner-General of the GRA that the debts have become bad. Under the Tax Act, provisions for bad and doubtful debts are not allowed for tax purposes.

All amounts recovered with respect to bad debts that were deducted must be included in income for the accounting year of the recovery.

**Capital allowances (tax depreciation).** Capital allowances are granted on depreciable assets. Depreciable assets are classified into six different classes. Assets in Classes 1 to 4 are placed in separate pools, and capital allowances granted with respect to the pool. Capital allowances for Classes 5 and 6 assets are granted on individual assets of the same class. To claim capital allowances, a company must satisfy the following conditions:

- It used the asset in the production of the income.
- It incurred cost in purchasing the asset.
- It notified the Commissioner-General of the GRA within one month after putting the asset to use.

The following table 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)
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)

Class	Assets	Rate %	Formula for calculating capital allowances
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 for export may carry forward their losses for five years. For this purpose, a tourism enterprise is defined as 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-for-export business is defined as 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 within a group must file a separate tax return. No measures exist for the offsetting of losses against profits among members of the group.

#### 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 Ghana cedi (GH¢).

The Foreign Exchange Act, 2006 (Act 723) governs foreign-exchange controls in Ghana. However, the Bank of Ghana exercises much discretion in administering the act.

**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*)
- Thin capitalization (exempt-debt to exempt-equity ratio; see *Debt-to-equity ratio*)

**Transfer pricing.** If the Commissioner-General of the GRA determines that a transaction between two related companies is artificial or fictitious, the Commissioner-General may set the transaction aside or adjust the transaction to ensure that the proper amount of tax is paid. This is particularly the case if the Commissioner-General takes the view that the main purpose or one of the main purposes of entering into the transaction was to reduce the tax. In that case, the Commissioner-General 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
	%	%	%
Belgium	5	10	15
Denmark*	8	10	15
France	8	10	15
Gambia*	8	10	15
Germany	8	10	15
Italy	5	10	10
Netherlands	8	10	15
Nigeria*	8	10	15
Sierra Leone*	8	10	15
South Africa	8	10	15
Sweden*	8	10	15
United Kingdom	8	10	15
Nontreaty countries	8	8	10

\* 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 (%)	20
Capital Gains Tax Rate (%)	20
Branch Tax Rate (%)	20
Withholding Tax (%)	
Dividends	25 (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	40 (a)
Royalties from Patents, Know-how, etc.	25 (a)
Services	25 (d)
Branch Remittance Tax	25
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This withholding tax is subject to rates under applicable double tax treaties.  
 (b) This tax is final for individuals (but not for corporations). For banks, final taxation is deferred.  
 (c) This withholding tax is imposed principally on payments to residents.  
 (d) 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 income tax rate is 20%.

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 25%.

**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 up front 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 for Greek shares 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 income tax rate with a credit for the 5% tax already paid.

Sales of listed shares made on or before 31 December 2012 are subject to 0.2% transaction duty. It is expected that for sales of listed shares made on or after 1 January 2013, the 0.2% transaction duty will be abolished and a capital gains tax will apply to capital gains deriving from such sales.

**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 income tax return during the fifth month after the end of their accounting year.

In general, on filing their annual corporate income 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 80% (100% 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 60% of the 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 120% 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.** A 25% withholding tax is imposed on dividends distributed by Greek SAs and EPEs to Greek or foreign beneficiaries, unless an applicable double tax treaty provides otherwise (see Section F) or unless tax relief is available under the European Union (EU) Parent-Subsidiary Directive (90/435/EEC). See below for details regarding this directive. This tax represents the final tax liability of the recipient with respect to the dividends received.

The above withholding tax also applies to dividends distributed by foreign companies to Greek tax-resident individuals. This is also a final tax for recipients.

If the requirements contained in the EU Parent-Subsidiary Directive (90/435/EEC) are met, no tax is withheld on dividends distributed by Greek subsidiaries to parent companies established in other EU member states. In particular, dividends that Greek subsidiaries (SAs and EPEs) pay to parent companies established in other EU member states are exempt from tax at the corporate level (that is, no Greek withholding tax applies) if the EU parent company holds a minimum 10% participation in the Greek subsidiary for at least two consecutive years.

Dividends received by Greek parent companies (SAs and EPEs) on or after 31 March 2011 from subsidiaries established in other EU member states, in which the recipient holds a minimum 10% participation for at least two consecutive years, are exempt from tax at the corporate level, to the extent that they are registered under a tax-free reserve account. If these dividends are further distributed or capitalized, they are subject to dividend withholding tax at a rate of 25%.

A 20% tax is withheld by intermediary banks from remittances of dividends distributed by non-EU companies to Greek tax resident corporations. This tax may be offset against the final tax liability of the Greek corporations.

**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 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
- 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, if they comply with the arm's length principle.
- Bad debt provisions (see *Provisions*).
- 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.

**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. As 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.

<b>Asset</b>	<b>Low rate (%)</b>	<b>High rate (%)</b>
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.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added tax (VAT)	
Standard rate	23
Reduced rate	13
	(special reduced rate of 6.5%)
Special rates	5/9/16
Stamp duty on private loan agreements	2.4/3.6
Capital duty	1.1
Annual real estate tax; imposed on the value of real estate owned by legal entities	0.6
Special property tax; imposed on the "objective" value of real estate property; the tax does not apply if the company has listed shares or if it discloses its corporate structure and the ultimate individual shareholders or partners are revealed	15
Real estate transfer tax; imposed on taxable value	
First €15,000 of taxable value	8
Taxable value in excess of €15,000	10

## 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.** The Greek tax legislation includes a transfer-pricing clause (Article 39 of the Greek Income Tax Code) that is aligned with international standards. In addition, Article 39A includes the concept of documentation files that must be maintained by the enterprise.

**Debt-to-equity rules.** Greek tax legislation includes thin-capitalization rules with respect to the deduction of interest on loans if the debt-to-equity ratio exceeds 3:1.

**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 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 is 5%.

The following table provides treaty withholding tax rates for dividends, interest and royalties.

	Dividends %	Interest %	Royalties %
Albania	5	5	5
Armenia	10	10	5
Austria	0/5/15 (m)(n)	5/8 (o)	5/7 (o)
Azerbaijan	8	8	8
Belgium	0/5/15 (m)(n)	5/10 (l)(o)	5
Bulgaria	0/10 (n)	5/10 (o)	5/10 (o)
Canada	5/15 (m)	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
China	5/10 (m)	0/10 (l)	10
Croatia	5/10 (m)	10	10
Cyprus	0/25 (n)	5/10 (o)	0 (e)
Czechoslovakia (i)	0/25 (n)	5/10 (o)	5/10 (o)
Denmark	0/25 (n)	5/8 (o)	5
Egypt	10	15	15
Estonia	0/5/15 (m)(n)	5/10 (o)	5/10 (a)(o)
Finland	0/25 (n)	5/10 (o)	5/10/25 (o)(k)
France	0/25 (n)	5/10 (o)	5
Georgia	8	8	5
Germany	0/25 (n)	5/10 (o)	0
Hungary	0/25 (n)	5/10 (o)	5/10 (o)
Iceland	5/15 (m)	8	10
India	25	40	25
Ireland	0/5/15 (m)(n)	5	5
Israel	25	10	10
Italy	0/15 (n)	5/10 (j)(o)	5 (a)(g)
Korea (South)	5/15 (m)	8	10
Kuwait	0/5 (p)	0/5 (p)	15
Latvia	0/5/10 (m)(n)	5/10 (o)	5/10 (a)(o)
Lithuania	0/5/15 (m)(n)	5/10 (o)	5/10 (a)(o)
Luxembourg	0/25 (n)	5/8 (o)	5/7 (h)(o)
Malta	0/5/10 (m)(n)	5/8 (o)	5/8 (o)
Mexico	10	0/10 (l)	10
Moldova	5/15 (m)	10	8
Morocco	5/10 (m)	10	10
Netherlands	0/25 (n)	5/8/10 (f)(o)	5/7 (h)(o)
Norway	25	10	10
Poland	0/25 (n)	5/10 (o)	5/10 (o)
Portugal	0/15 (n)	5/15 (o)	5/10 (o)
Qatar	5	0/5 (q)	5
Romania	0/25 (n)	5/10 (o)	5/7 (a)(h)
Russian Federation	5/10 (m)	7	7
Saudi Arabia	5	5	10
Serbia	5/15 (m)	10	10
Slovenia	0/10 (n)	5/10 (o)	5/10 (o)
South Africa	5/15 (m)	8 (j)	5/7 (a)(h)
Spain	0/5/10 (m)(n)	5/8 (o)	5/6 (o)
Sweden	0/25 (n)	5/10 (o)	5
Switzerland	0/25 (n)	0/10 (o)	0/5 (o)
Tunisia	25	15	12
Turkey	15	0/12 (l)	10
Ukraine	5/10 (m)	10	10
United Kingdom	0/25 (n)	0	0
United States	25	0 (b)	0 (d)
Uzbekistan	8	10	8
Nontreaty countries (c)	25	40	25

(a) The rate is 5% for royalties paid for the use of industrial, commercial or scientific equipment (7% under the Romania and South Africa treaties).

(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 to the extent that the interest is paid at an annual rate exceeding 9%.

(c) For details, see Section A.

- (d) The 0% rate does not apply to cinematographic film royalties paid to U.S. residents.
- (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 royalties for literary, artistic or scientific works, including films.
- (i) Greece honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (j) Under the South Africa treaty, the rate is 0% for interest paid to the South Africa Reserve Bank. Under the Italy treaty, the rate is 0% for interest payments made by the Greek government, interest payments made to the Italian government and interest payments relating to government loans.
- (k) The 10% rate applies to copyright royalties for literary, artistic, or scientific works. For other royalties, the 25% rate applies.
- (l) The rate is 5% if the recipient is a bank. Under the China, Mexico and Turkey treaties, the rate is 0% if the recipient is a government bank.
- (m) The 5% rate applies if the recipient of the dividends is a company that owns more than 25% of the payer corporation.
- (n) The 0% rate applies if the conditions of the EU Parent-Subsidiary Directive are met (for Switzerland, the 0% rate applies if the conditions of the European Community (EC)-Switzerland agreement providing for measures equivalent to those in Directive 2003/48/EC are met).
- (o) The 5% rate applies if the terms of the EU Interest-Royalties Directive are met and if the payment is made after 1 July 2009 (for Switzerland, the 0% rate applies if the conditions of the EC-Switzerland agreement providing for measures equivalent to those in Directive 2003/48/EC are met).
- (p) The 0% rate for dividends and interest payments applies if the recipient is the government of Kuwait or a state division or subdivision, the Central Bank of Kuwait or other government organizations or government funds.
- (q) The 0% rate on interest payments applies if the recipient is the government of Qatar.

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## Guam

(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 following table 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 12 fluid ounces
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 \$110,100 (for 2012); paid by	
Employer	7.65%
Employee	7.65%
Wages in excess of \$110,100 (for 2012); 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).

## Guatemala

(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	3.1 (e)
News Services, Videos and Films	3.1 (e)
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 nominal withholding tax rate is 31%, which is applied to deemed taxable income equal to 10% of gross income. As a result, the effective tax rate is 3.1%.

## 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 one of the following tax regimes:

- The General Tax Regime, which applies on a gross receipts basis
- The Optional Tax Regime, which applies on a net income basis

Under the General Tax Regime, companies are subject to tax at a rate of 5% on taxable income. Taxable income is defined as gross income less exempt income. Consequently, unless the income is exempt, companies are subject to a 5% final tax on gross income. No deductions are allowed. The 5% tax is paid through withholding or 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. In addition, the following taxpayers must file the annual income tax return together with financial statements audited by a certified public accountant or an independent audit firm:

- Taxpayers operating under the Optional Income Tax Regime

- Taxpayers that are qualified as “Special Taxpayers” or that have been authorized to operate under the Drawback or Free-Trade Zone Regimes

**Dividends.** Dividends received 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.
- 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. Banks and financial institutions are exempt from this tax.

**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\$6,401) 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.
- 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 following table 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\$0.16 to US\$0.59 per gallon
Land tax; imposed annually on value of land; maximum rate, applicable to value in excess of GTQ 70,000 (approximately, US\$8,962)	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%

<b>Nature of tax</b>	<b>Rate</b>
Import duties	0% to 20%
Social security tax; imposed on wages; paid by	
Employer	12.67%
Employee	4.83%
Solidarity Tax (ISO); imposed 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; newly organized entities are not subject to ISO during their first four quarters of operations; entities that have a gross margin of lower than 4% of its gross income or incur losses for two consecutive years are not subject to the tax	1%

### **E. Miscellaneous matters**

**Foreign-exchange controls.** The currency in Guatemala is the quetzal (GTQ). As of 29 December 2011, the average exchange rate was GTQ 7.81083 = 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**

(Country code 44)

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*At the time of writing, a review of the tax system is underway and major changes are anticipated. Consequently, 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	0
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) Dividend withholding tax is not imposed on dividends paid to foreign shareholders. See Section B. Under antiavoidance 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.

**Rates of corporate income tax.** The general rate of corporate income tax is 0%. Profits derived by banks from regulated deposit taking activities are taxed at a rate of 10%. Regulated 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*.

**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. The exempt company regime has been abolished for all companies, with the exception of collective investment schemes (see *Collective investment schemes*).

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*.

**Banking and insurance companies.** 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 in Guernsey. These schemes can apply to be 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, as mentioned in *Rates of corporate income tax*, a 0% rate of corporate income tax applies to most companies in Guernsey, a 10% rate applies to regulated deposit taking businesses, and a 20% rate applies to regulated utility companies and companies receiving Guernsey property income.

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 as deemed distributions.

Substantial antiavoidance measures exist. Under one of these measures, loans to Guernsey shareholders are also 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.

Recently, the EU, via the U.K. Treasury, notified that the 0%/10% tax regime may not conform to the spirit of the EU Code of Conduct. Guernsey is undertaking a review of its company taxation regime. However, no material changes are expected until 2013, at the earliest.

**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 (in certain cases, only biannual reporting is required), 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.

Each company must file an annual validation form and pay the relevant filing fee. The amount payable is based on the activities of the company. Fees range from £100 to £1,000.

**Dividends.** 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*).

**Foreign tax relief.** Guernsey grants specific double taxation relief for income from its treaty countries and grants unilateral relief 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 or have a fixed place of business in Guernsey.

### D. Social security contributions

Social security contributions are payable on the salaries and wages of employees resident in Guernsey. For 2011, the maximum employer contribution is £7,858, and the maximum employee contribution is £5,516. For 2012, the maximum contributions are £8,142 and £6,308 respectively.

### 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 took effect on 1 January 2008, substantial antiavoidance measures were 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 longstanding extensive tax treaties with Jersey and the United Kingdom. It also has limited treaties with Australia, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Ireland, New Zealand, Norway and Sweden. Of the more recent limited treaties, only those with Finland, Iceland, Norway and Sweden are in effect. In addition, Guernsey recently entered into various new tax information exchange agreements (TIEAs) with Argentina, Australia, the Bahamas, Canada, the Cayman Islands, China, Denmark, the Faroe Islands, Finland, France, Germany, Greece, Greenland, Iceland, Indonesia, Ireland, Mexico, the Netherlands, New Zealand, Norway, Portugal, Romania, San Marco, Slovenia, South Africa, Sweden, the United Kingdom and the United States. TIEAs provide for the exchange of information between tax authorities, on request, with respect to the tax position of resident persons.

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## Guinea

(Country code 224)

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Corporate Income Tax Rate (%)	35 (a)
Capital Gains Tax Rate (%)	35 (b)
Branch Tax Rate (%)	35 (a)
Withholding Tax (%)	
Dividends and Directors' Fees	10
Interest	10
Royalties from Patents, Know-how, etc.	10 (c)
Capital gains on shares	10
Payments for Services	10 (d)
Branch Remittance Tax	10 (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). Under the 2011 Financial Law, capital gains on transfers of shares are taxed at a rate of 10%.  
 (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 10% 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.

Under the 2011 Financial Law, capital gains on transfers of shares are taxed at a rate of 10%.

**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 33⅓% 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 10% 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
- 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax, on sales of goods and services and on imports	
Standard rate	18

Nature of tax	Rate (%)
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 1,500,000	
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	10 (c)
Interest	10
Royalties	10
Leasing of Movable and Immovable Property	10
Communications	10

Public Entertainment Shows	10
Air, Sea and Land Transport	10
Mining Royalties	10
Salaries and Other Payments for Services	10
Fees and Commissions	10
Reinsurance	10
Videos and Films	10 (d)
Other	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (e)

- (a) For the 2003 through 2009 fiscal years, a temporary Social Contribution Tax was imposed at a rate of 5% on companies with net income exceeding L 1 million (approximately US\$52,438). Under Decree 27-2008, the 5% tax was not considered a deductible expense for income tax purposes. Under Decree 17-2010, the rate applicable to taxable income exceeding L 1 million was increased to 10%, effective from the 2010 fiscal year. The rate is 6% for the 2012 fiscal year and will be progressively reduced until it reaches 0% for the 2015 fiscal year. For a table listing the rates for 2012 through 2015, see Section B. Honduran corporate resident taxpayers are also subject to 1% tax assessed on gross income for the period if the application of the ordinary corporate income tax rate (25%) to net taxable income results in a payment of less than the amount of the 1% tax. This also serves as an alternative minimum tax. In effect, the asset tax (see Section B) and the gross income tax apply as two computations of alternative minimum tax.
- (b) Withholding taxes are imposed on payments to nonresident companies and individuals.
- (c) The withholding tax on dividends took effect on 12 May 2010.
- (d) This withholding tax applies to payments for films and video tapes for movies, television, video clubs and cable television.
- (e) 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.

For the 2003 through 2009 fiscal years, a temporary Social Contribution Tax was imposed at a rate of 5% on companies with net income exceeding L 1 million (approximately US\$52,438). Under Decree 27-2008, the 5% tax was not considered a deductible expense for income tax purposes. Under Decree 17-2010, the rate applicable to taxable income exceeding L 1 million was increased to 10%, effective from the 2010 fiscal year. The rate is 6% for the 2012 fiscal year and will be progressively reduced until it reaches 0% for the 2015 fiscal year. The following are the tax rates for 2012 through 2015.

Fiscal year	Rate (%)
2012	6
2013	5
2014	4
2015	0

Honduran corporate resident taxpayers are also subject to 1% tax assessed on gross income for the period if the application of the

ordinary corporate income tax rate (25%) to net taxable income results in a payment of less than the amount of the 1% tax. This also serves as an alternative minimum tax. In effect, the asset tax (see *Asset tax*) and the gross income tax apply as two computations of alternative minimum tax.

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)
- 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.** Effective from 12 May 2010, a 10% withholding tax is imposed on dividends.

**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 29 December 2011, the exchange rate for the lempira was L 189.95 = 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.

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**A. At a glance**

Corporate Income Tax Rate (%)	16.5
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	16.5
Withholding Tax (%)	
Dividends	0
Interest	0
Royalties from Patents, Know-how, etc.	
Paid to Corporations	4.95/16.5*
Paid to Individuals	4.5/15*
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

\* This is a final tax applicable to persons not carrying on business in Hong Kong. The general withholding tax rate is 4.95% for payments to corporations. For payments to individuals (including unincorporated businesses), the general withholding tax rate is 4.5%. 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 16.5% applies to payments to corporations and, for payments to individuals (including unincorporated businesses), a 15% rate applies.

**B. Taxes on corporate income and gains**

**Profits tax.** Companies carrying on a trade, profession or business in Hong Kong are subject to profits tax on profits arising in or derived from Hong Kong. However, certain royalties received from a Hong Kong payer by a foreign entity that does not otherwise carry on a trade, profession or business in Hong Kong are liable to a withholding tax in Hong Kong (see Section A).

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 procedures.

**Rates of profits tax.** The corporate rate of profits tax is 16.5%.

Interest income and trading profits derived by corporations from qualifying debt instruments with a maturity period of less than seven years are taxed at a rate of 8.25%, 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 8.25%) on the income derived from the business of reinsurance of offshore risks. Authorized and certain bona fide widely held mutual funds, collective-investment schemes and unit trusts are exempt from tax.

**Tax exemption for nonresident funds.** 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. An 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, 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, regardless of whether the fund makes an actual distribution.

**Capital gains.** Capital gains are not taxed, and capital losses are not deductible for profits tax purposes.

**Administration.** A fiscal year runs from 1 April to 31 March. If 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.

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.** Hong Kong does not impose withholding tax on dividends paid to domestic or foreign shareholders. In addition, dividends received from foreign companies are not taxable in Hong Kong.

**Foreign tax relief.** In certain circumstances, a deduction is allowed for foreign taxes paid. A foreign tax credit is available under the full comprehensive double tax treaties entered into between Hong Kong and other jurisdictions. 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 double tax treaties, 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.

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. However, this may not apply to shares and securities held for trading purposes.

### **Capital allowances**

*Industrial buildings.* An initial allowance of 20% is granted on new industrial buildings in the year in which 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 the purchase of used buildings, but annual depreciation allowances may be available. Subject to certain exceptions, buildings used for the purposes of a qualifying trade are industrial buildings.

*Commercial buildings.* An annual allowance (4% of qualifying capital expenditure each year) is available on commercial buildings. Buildings that do not qualify as industrial buildings are commercial buildings. Refurbishment costs for premises, other than those used as domestic dwellings, may be deducted in equal amounts over a five-year period.

*Prescribed plant and machinery.* Subject to satisfying certain conditions, companies may immediately write off 100% of expenditure on manufacturing plant and machinery and on computer software and hardware.

*Environmental protection facilities.* Subject to satisfying certain conditions, capital expenditure incurred on eligible environmental protection machinery and environmentally friendly vehicles qualifies for a 100% write-off in the year in which the expenditure is incurred. Expenditure incurred on the construction of an eligible environmental protection installation forming part of a building or structure is deductible in equal amounts over a period of five years.

*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) and environmental protection machinery and installations that were previously written off in full. Consequently, in the year of disposal, the sales proceeds from prescribed 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 depreciable 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.** Losses incurred in a year can be carried forward indefinitely and set off against the profits of the company in subsequent years. 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, restrictions are placed on the deductibility of interest expense. In general, subject to certain specific antiavoidance rules, interest on monies borrowed is deductible for tax purposes if it is incurred in the production of chargeable profits in Hong Kong and if one of the following additional conditions is satisfied:

- The recipient is taxable in Hong Kong on the interest.
- The interest is paid to a recognized financial institution in Hong Kong or overseas.

- The interest is paid with respect to debt instruments that are listed or marketed in Hong Kong or in a recognized overseas market.
- The interest is paid with respect to money that is borrowed from an unrelated person and that is wholly used to finance capital expenditures on plant and machinery qualifying for capital allowances or the purchase of trading stock.

**Reversion of sovereignty to Mainland China.** Since 1 July 1997, Hong Kong has been a Special Administrative Region (SAR) of Mainland China under Article 31 of the constitution of Mainland China. However, as an SAR, 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.

For the avoidance of double taxation on shipping income, Hong Kong has entered into agreements with Denmark, Germany, Norway, Singapore, Sri Lanka and the United States. These agreements generally provide for tax exemption in one territory for profits and capital gains derived by an enterprise of the other territory in the first-mentioned territory with respect to the operation of ships in international traffic. However, under the agreement between Hong Kong and Sri Lanka, 50% of the profits derived from the operation of ships in international traffic may be taxed in the source jurisdiction. Apart from these agreements, reciprocal exemption provisions with the tax authorities of Korea (South) and New Zealand have also been confirmed.

Hong Kong has signed double tax agreements relating to airline profits with several jurisdictions, including Bangladesh, Canada, Croatia, Denmark, Estonia, Ethiopia, Fiji, Finland, Germany, Iceland, Israel, Jordan, Kenya, Korea (South), Kuwait, Laos, the Macau SAR, Maldives, Mauritius, Mexico, Norway, the Russian Federation, Singapore, Sri Lanka, Sweden and Switzerland (the agreements with Kuwait and Switzerland will no longer apply when Hong Kong’s comprehensive double tax treaties with these countries take effect). Under these agreements, international transport income of Hong Kong airlines is exempt from tax in these signatory countries. However, international transport income of Hong Kong airlines that is exempt from tax overseas either under the agreements or relevant treaties is taxed in Hong Kong.

Hong Kong has also entered into full comprehensive double tax treaties modeled on the conventional tax treaty adopted by the Organization for Economic Cooperation and Development (OECD), with the jurisdictions listed in the table below. The table

shows the withholding tax rates for dividends, interest and royalties paid from Hong Kong to residents of the treaty jurisdictions. The rates shown in the table are the lower of the treaty rates and the applicable rates under Hong Kong domestic law.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Austria	0	0	3
Belgium	0	0	4.5/4.95 (a)
Brunei Darussalam	0	0	4.5/4.95 (a)
China (Mainland)	0	0	4.5/4.95 (a)
Czech Republic	0	0	4.5/4.95 (a)
France	0	0	4.5/4.95 (a)
Hungary	0	0	4.5/4.95 (a)
Indonesia	0	0	4.5/4.95 (a)
Ireland	0	0	3
Japan	0	0	4.5/4.95 (a)
Kuwait	0	0	4.5/4.95 (a)
Liechtenstein	0	0	3
Luxembourg	0	0	3
Malta (b)	0	0	3
Netherlands (b)	0	0	3
New Zealand	0	0	4.5/4.95 (a)
Portugal	0	0	4.5/4.95 (a)
Spain	0	0	4.5/4.95 (a)
Switzerland (b)	0	0	3
Thailand	0	0	4.5/4.95 (a)
United Kingdom	0	0	3
Vietnam	0	0	4.5/4.95 (a)
Nontreaty countries	0	0	4.5/4.95 (a)

(a) The withholding rates in Hong Kong applicable to individuals (including unincorporated businesses) and corporations are 4.5% and 4.95%, respectively. These rates are lower than those specified in the relevant tax treaties and consequently, the Hong Kong domestic rates apply.

(b) The tax treaties are still pending ratification. The reduced rate for royalties will not apply until the ratification procedures are completed.

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A foreign-exchange rate of HUF 200 = US\$1 is used to convert Hungarian forints into U.S. dollars in this chapter.

## A. At a glance

Corporate Income Tax Rate (%)	10/19 (a)
Capital Gains Tax Rate (%)	10/19 (a)
Branch Tax Rate (%)	10/19 (a)(b)
Withholding Tax (%)	
Dividends	
Paid to Companies	0
Paid to Individuals	16
Interest	
Paid to Companies	0 (c)
Paid to Individuals	16 (d)
Royalties	0 (c)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The 19% rate is the standard rate of corporate income tax. The 10% rate applies to the first HUF 500 million (approximately US\$2,500,000) of taxable income. 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) Permanent establishments of foreign companies are subject to special rules for the computation of the tax base (see Section B).
- (c) Withholding tax on interest paid to companies, royalties and service fees was abolished, effective from 1 January 2011.
- (d) See Section B.

## 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 through a permanent establishment are subject to corporate tax on their net profits derived from Hungarian sources.

**Rates of corporate income tax.** The standard rate of income tax for Hungarian and foreign companies is 19%. However, for the first HUF 500 million (approximately US\$2,500,000) of taxable income, the tax rate is 10%. The tax benefit resulting from the lower tax rate can be up to HUF 45 million (approximately US\$225,000).

Permanent establishments are taxed in almost the same manner as Hungarian corporations. If a foreign company operates through court-registered 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. If foreign tax residents do not register their permanent establishments with the court as branches, it is possible to consolidate permanent establishments of the same entity for tax purposes.

**Alternative minimum tax.** The alternative minimum tax (AMT) was originally a tax on a certain minimum tax base. However, in

response to a decision of the Constitutional Court invalidating the legislation, the AMT was effectively converted to an optional tax. Taxpayers either pay the AMT or fill out a form and, in principle, are more likely to be selected for a tax audit.

Taxpayers must determine their AMT base and calculate corporate income tax at the general rates of 10% and 19% on this base if the AMT base exceeds the annual pretax profit or the tax base (calculated according to the general rules), whichever is higher. The AMT base generally equals 2% of revenues less cost of goods sold and income attributable to foreign permanent establishments. If a company's AMT is higher than the corporate income tax otherwise calculated or the pretax profit, the taxpayer may choose to pay either of the following:

- AMT.
- Corporate income tax in an amount less than the AMT. In this case, the company must fill out a one-page form that provides information regarding certain types of expenses and, in principle, is more likely to be selected for a tax audit.

### **Tax incentives**

*Reduced rates on certain types of income.* Companies may reduce their corporate tax base by 50% of royalty income, which includes, in certain cases, income from the disposal of intangible property.

The total reduction mentioned above may not exceed 50% of the pretax profit of the company. The deduction may be claimed on the tax return. Unlike the development tax allowance (see *Development tax allowance*), no special reporting or preapproval obligations are imposed.

*Research and development double deduction.* In addition to being recognized expenses for corporate income tax purposes, the direct costs of basic research, applied research and research and development (R&D) incurred within the scope of a company's activities reduces the corporate income tax base. As a result, a double deduction is allowed for these expenses for corporate income tax purposes.

*Development tax allowance.* 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\$15 million) or an investment of HUF 1 billion (approximately US\$5 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).
  - 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 2012, the minimum wage is HUF 93,000 [approximately US\$460]).
- The investment comprises one of the following:
  - The acquisition of a new asset.
  - The enlargement of existing assets.
  - The fundamental modification of the final product or the previous production method as a result of the investment.

Small and medium-sized enterprises may become eligible for development tax allowances with respect to investments implemented in any region.

A development tax allowance can also be claimed for investments of at least HUF 100 million (approximately US\$500,000) 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 National Economy if their investment-related costs and expenses exceed €100 million (approximately US\$136 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.

*Film tax credit.* Tax relief is provided to Hungarian companies sponsoring film production carried out in Hungary. The contributions are effectively refunded by the state because the sponsors can deduct the contributions from the corporate income tax payable, but the amount deducted may not exceed 20% of eligible expenses. In addition, amounts spent on film sponsorship are also deductible for corporate income tax purposes. 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.

To qualify for tax incentives, films are subject to a comprehensive cultural test, which grants points for various aspects of the production, including the members of the crew, the actors and the theme of the film being European. In general, only films receiving more than a certain number of points qualify.

*Sports tax credit.* Tax relief is provided to Hungarian companies supporting sports organizations in the following popular team sports:

- Football
- Handball
- Basketball
- Water polo
- Ice hockey

Under the sports tax credit scheme, national sports associations, professional sports organizations, amateur sports organizations, nonprofit foundations and civil sports organizations may be supported. Donations granted to these sports organizations are fully

creditable against the corporate tax liability of the donor, capped at 70% of the donor's total corporate tax liability. Unused tax credits may be carried forward for a period of three years. In addition, amounts donated are also deductible for corporate income tax purposes.

*Investments in job creation.* The special tax incentive for investments in job creation is advantageous because no minimum investment value is required. In addition, effective from 2010, the allowance is available regardless of the number of the newly created jobs.

The tax allowance amount can be used throughout a 10-year period beginning when the tangible assets relating to the newly created jobs are put into operation. The tax allowance is capped at the amount of the 24-month total employment costs (including personal income tax, social security and other related contributions) for the newly hired employees multiplied by the relevant intensity rates (25% or 50%, depending on location).

*Other.* Certain other investment incentives introduced before 31 December 2002 are not available after 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.

Capital gains derived by nonresident companies from disposals of Hungarian shares (except for shares in a "company holding real estate;" see below) are not subject to tax, unless the shares are held through a permanent establishment of the seller in Hungary.

*Reported shares.* 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 60 days after the date of the acquisition to the Hungarian tax authorities, the shares are considered to be "reported shares." If a shareholding has already been reported to the tax authorities, further reporting is necessary only if the proportion of the shares held increases.

Capital gains (including foreign-exchange gains) derived from the sale of the reported shares or from the contribution of the reported shares in kind to the capital of another company are exempt from corporate income tax. Capital losses (including foreign-exchange losses) incurred on such investments are not deductible for tax purposes.

*Reported intangibles.* Similar to the rules of reported shares, the acquisition of royalty-generating intangible assets (intellectual property and pecuniary rights) can be reported to the Hungarian tax authorities within 60 days after the date of acquisition. If the reported intangible asset is sold or disposed of after a holding period of at least one year, the gain on the sale is nontaxable. However, any losses related to such reported intangible asset (that is, impairment) are not deductible for corporate income tax purposes.

In addition, a new rollover rule has been introduced. If a nonreported intangible asset is sold, the gain on the sale is exempt from tax if this gain is used to purchase further royalty-generating intangibles within four years.

*Companies holding real estate.* Gains that are realized on the alienation of shares (including in-kind contributions and gifts) by a foreign resident in a Hungarian “company holding real estate” or on the withdrawal of shares from such a company through a capital reduction are taxable in Hungary at a rate of 19%.

A Hungarian company qualifies as a “company holding real estate” if more than 75% of the market value of its total assets is real property located in Hungary or if, at a group level, the value of the real estate located in Hungary is more than 75% of the total market value of the assets.

The capital gain is taxable only if the company’s shareholder or any of the group members (at least on one day during the tax year) is resident in a nontreaty country or if a double tax treaty allows for the taxation of such gains.

The capital gain is not taxable if the Hungarian company is listed on a recognized stock exchange.

**Administration.** In general, the calendar year is the tax year. However, companies may choose a different tax year if such year best fits their business cycle or is required to meet the management information needs 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.

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\$2,500) 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 interest rate (on 9 December 2011, the prime interest rate was 6.5%). 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.

In their corporate income tax returns, taxpayers also declare the tax advances that they will pay for the 12-month period beginning in the second month after the filing deadline. The total of these advances equals the amount of tax payable for the year covered in the corporate income tax return. For calendar-year taxpayers, which have a filing deadline of 30 May, advances are

payable over a 12-month period beginning in July of the year following the year covered in the corporate income tax return and ending in June of the subsequent year. For companies with a corporate income tax liability exceeding HUF 5 million (approximately US\$25,000) in the preceding year, advance payments are divided into 12 equal monthly installments. Other companies make quarterly advance payments. In addition, by the 20th day of the last month of their tax year, companies must make a “top-up payment” if their net sales revenues exceeded HUF 100 million (approximately US\$500,000) in the preceding tax year. The amount of the payment is the difference between the installments paid during the tax year and the anticipated tax liability for the tax year.

### **Dividends**

*Dividends paid by Hungarian companies.* Withholding tax on dividends paid to foreign companies was abolished, effective for dividends paid on or after 1 January 2006.

Withholding tax at a rate of 16% is imposed on dividends paid directly to resident and nonresident individuals. Tax treaties may override Hungarian domestic law with respect to the withholding tax on dividends.

*Dividends received by Hungarian companies.* In general, dividends received by Hungarian companies are exempt from corporate income tax. The only exception applies to dividends paid by controlled foreign corporations (CFCs; see Section E).

### **Interest, royalties and service fees**

*Interest, royalties and service fees paid by Hungarian companies.* Effective from 1 January 2011, withholding tax is no longer imposed on interest paid to companies, royalties and service fees.

Hungary imposes withholding tax at a rate of 16% on interest paid directly to individuals (this rule does not apply to interest paid to individuals resident in certain countries if the payment falls under a reporting obligation under the European Union [EU] Savings Directive).

*Interest and royalties received by Hungarian companies.* A tax incentive may apply to royalties received by Hungarian companies (see *Tax incentives*). Interest received by a Hungarian company is taxable according to the general rules.

**Foreign tax credit.** Foreign taxes paid on foreign-source income may be credited against Hungarian tax. Foreign dividend withholding tax may be credited for Hungarian tax purposes if the dividend or the undistributed profit is subject to tax in Hungary.

## **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 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 free transfers (if certain conditions are not met).

**Tax depreciation.** In general, depreciation is deductible in accordance with the Annexes to the Act on Corporate Income Tax. Effective from 2012, lower rates may be elected if they are not lower than those used for accounting purposes. The annexes specify, among others, the following straight-line tax depreciation rates.

<b>Asset</b>	<b>Rate (%)</b>
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.** Losses incurred in 2004 and subsequent years may be carried forward indefinitely. Losses incurred in 2009 and subsequent years can be carried forward without the need to obtain permission from the tax authority if the negative tax base was generated in compliance with the principle of proper exercise of rights. Permission from the tax authority was required to carry forward losses for years before 2009.

Effective from 1 January 2012, losses carried forward from previous years can be used to decrease the pretax profit only up to 50% of the tax base.

Change-of-control restrictions have been introduced with respect to the availability of previously incurred tax losses after corporate transformations, mergers and acquisitions.

**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 following table summarizes other significant taxes and provides the 2012 rates for these taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added (sales) tax, on goods, services and imports	
Standard rate	27
Preferential rates	5/18
Bank tax; imposed on various entities in the financial market; the tax base and tax rate varies by financial activity	Various
Tax on retail companies; imposed on net revenues	2.5

<b>Nature of tax</b>	<b>Rate (%)</b>
Tax on telecommunication companies; imposed on net revenues	0 to 6.5
Tax on energy suppliers; imposed on net revenues	1.05
Social security contributions, on gross salaries; in general, expatriates do not participate; paid by Employer	27
Employee; the contribution represents the sum of the 8.5% health-care contribution and the 10% pension fund contribution; the base of the pension fund contribution is capped at HUF 7,942,200 (US\$40,000)	18.5
Excise duty, on various goods, including gasoline, alcohol, tobacco, beer, wine and champagne	Various
Local business tax; imposed on turnover or gross margin (A decision of the European Court of Justice held that this tax was compatible with EU law.)	2

### **E. Miscellaneous matters**

**Foreign-exchange controls.** The Hungarian currency is the forint (HUF). Hungary does not impose any foreign-exchange controls; the forint is freely convertible.

Companies doing business in Hungary must open a bank account at a Hungarian bank to make payments to and from the Hungarian authorities. They may also open accounts elsewhere to engage in other transactions.

Payments in Hungarian or foreign currency may be freely made to parties outside Hungary.

**Transfer pricing.** Under transfer-pricing rules, for contracts between related or associated companies, the tax base of the companies must be adjusted by the difference between the market price and contract price if applying the market price would have resulted in higher income for the company. Taxpayers may also reduce the tax base in certain circumstances if, as a result of not applying market prices, their income is higher than it would have been if market prices had been applied. The market price must be determined by one of the following methods:

- Comparable uncontrolled price method
- Resale price method
- Cost-plus method
- Transactional net margin method
- Profit split method
- Any other appropriate method

These methods reflect the July 2010 update of the 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. 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 (including 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. The transfer-pricing rules also apply to in-kind dividend payments. Advance pricing agreements (APAs) are available.

Hungary has ratified and is applying the Arbitration Convention.

**Controlled foreign corporations.** Effective from 1 January 2010, a controlled foreign corporation (CFC) is defined as a company that meets one of the following two conditions, provided that one of the additional conditions mentioned in the next paragraph is also satisfied:

- It has a Hungarian resident individual shareholder who directly or indirectly owns at least 10% of the voting rights, or has a dominant influence in the company.
- The majority of the revenues of the company in the tax year derives from a Hungarian source.

In addition to the satisfaction of one of the conditions mentioned above, for a company to be considered a CFC, one of the additional conditions must be satisfied:

- The effective corporate tax rate for the company must be lower than 10%.
- Even though the company's pretax profit is positive, it does not pay tax because it has a zero or negative tax base.

The CFC regime does not apply if the registered seat or residency of the foreign company is in an OECD or EU member state, or in a state with which Hungary has a double tax treaty (provided that the foreign company has real economic presence in that state; this condition applies in all three cases). Also, the foreign company does not qualify as a CFC if an entity that has been listed on a recognized stock exchange for at least five years or a related party holds at least 25% of the shares of the foreign company on every day of the tax year.

If a Hungarian company has a share in a CFC of at least 25%, the corporate income tax base must be increased by the after-tax profit (decreased by the distributed dividend) of the CFC as of the last day of the tax year in proportion to the Hungarian company's direct shareholding. This adjustment must be made only if a Hungarian resident private individual does not directly or indirectly own shares in the Hungarian company.

Dividends received from CFCs do not qualify for the participation exemption regime and, accordingly, are treated as taxable income to the Hungarian shareholders (except for dividends that were already taxed as undistributed after-tax profits in previous years). Capital losses on investments in CFCs are not deductible for tax purposes. Hungarian companies may not reduce their tax base by making transfer-pricing adjustments for transactions with CFCs.

**Debt-to-equity rules.** A Hungarian company's taxable income is increased by the interest payable on the amount of net debt in excess of three times the amount of the company's average net equity during the tax year.

Liabilities can be calculated on a net basis; that is, only the proportion of liabilities that exceeds the amount of certain receivables

needs to be taken into consideration in the thin-capitalization calculation.

Effective from 1 January 2012, the thin-capitalization rules are extended to non-interest bearing liabilities if a transfer-pricing adjustment has been applied to them. Consequently, when calculating thin capitalization, interest accounted for in the books and deemed interest imputed as a result of transfer-pricing adjustments must be taken into account.

**Foreign investment.** No restrictions are imposed on the percentage of ownership that foreigners may acquire in Hungarian companies. Some restrictions exist with respect to the ownership of farmland.

## F. Treaty withholding tax rates

Hungary does not impose withholding taxes on payments to foreign entities. However, it does impose withholding tax on the payment of dividends and interest to foreign individuals (for details, see Section B).

Hungary has tax treaties in effect with the following countries.

Albania	Iceland	Philippines
Armenia (d)	India	Poland
Australia	Indonesia	Portugal
Austria	Ireland	Romania
Azerbaijan	Israel	Russian Federation
Belarus	Italy	San Marino (d)
Belgium	Japan	Serbia (b)
Bosnia- Herzegovina (a)	Kazakhstan	Singapore
Brazil	Korea (South)	Slovak Republic
Bulgaria	Kuwait	Slovenia
Canada	Latvia	South Africa
China	Lithuania	Spain
Croatia	Lxumbourg	Sweden
Cyprus	Macedonia	Switzerland
Czech Republic	Malaysia	Thailand
Denmark	Malta	Tunisia
Egypt	Mexico (d)	Turkey
Estonia	Moldova	Ukraine
Finland	Mongolia	United Kingdom
France	Montenegro (b)	United States (c)
Germany (f)	Morocco	Uruguay
Greece	Netherlands	Uzbekistan
Hong Kong SAR (e)	Norway	Vietnam
	Pakistan	

- (a) The 1985 treaty between Hungary and the former Socialist Federal Republic of Yugoslavia is applied with respect to Bosnia-Herzegovina.
- (b) The 2001 treaty between Hungary and the former Federal Republic of Yugoslavia is applied with respect to Serbia. In practice, Hungary and Montenegro also apply this treaty, but no formal announcement has been made to confirm this practice. With respect to Kosovo, it is unclear whether the 1985 or 2001 treaty between Hungary and Yugoslavia is to be applied.
- (c) This treaty was renegotiated in 2010.
- (d) The treaty is effective from 1 January 2012.
- (e) The treaty is effective from January 2012 in Hungary and from 1 April 2012 in the Hong Kong SAR.
- (f) The 1977 treaty between Hungary and Germany was renegotiated. The new treaty is effective from 1 January 2012.

Hungary is negotiating double tax treaties with Georgia and the United Arab Emirates. The tax treaty with the United Kingdom has been renegotiated and was signed on 7 September 2011, but it is not yet in force.

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### A. At a glance

Corporate Income Tax Rate (%)	20 (a)
Capital Gains Tax Rate (%)	20 (b)
Branch Tax Rate (%)	20
Withholding Tax (%)	
Dividends	
Residents	20 (c)
Nonresidents	18 (d)
Interest	
Residents	20
Nonresidents	18 (e)
Royalties from Patents, Know-how, etc. (f)	
Residents	20
Nonresidents	20
Payments under Leases and Rent (f)	
Residents	20
Nonresidents	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

(a) A 36% 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) Dividends received 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.
- (d) An 18% withholding tax is imposed on dividends paid to nonresident entities. A 20% withholding tax is imposed on dividends paid to nonresident individuals. Nonresidents can obtain a refund of the withholding tax or apply for an exemption from the withholding tax based on an applicable double tax treaty. If no double tax treaty applies, nonresidents must suffer the withholding tax.
- (e) An 18% withholding tax is imposed on interest paid to nonresident entities and a 20% withholding tax is imposed on interest paid to nonresident individuals unless, on application, the Director of Internal Revenue grants an exemption from withholding tax based on an applicable double tax treaty. Alternatively, the withholding tax may either be refunded or not withheld.
- (f) Royalties, payments under leases and rent payments that are paid to nonresident companies, partnerships and individuals are subject to withholding tax at a rate of 20%. A 20% rate applies to resident companies. A 36% rate applies to resident partnerships.

## B. Taxes on corporate income and gains

**Corporate income tax.** Resident companies are taxed on their worldwide income. Resident corporations are those incorporated, registered, domiciled or effectively managed in Iceland. Nonresident companies are taxed only on their income earned in Iceland.

**Rate of corporate tax.** The rate of corporate income tax is 20%. The rate for taxable partnerships is 36%.

**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.

**Profits from stock sales.** Profits derived by domestic companies from stock sales are considered ordinary income. However, profits derived from stock sales in domestic companies and in foreign companies that are taxed in a similar manner to Icelandic companies are fully deductible. Until the end of the 2011 fiscal year, the deduction may not generate a tax-loss carryforward and previous tax losses must have been offset. For the 2011 fiscal year only, the deduction cannot be claimed unless the party selling the stock owns at least 10% of shares in the entity at the time of the sale. Effective from 1 January 2012, the deduction may generate a tax-loss carryforward and previous tax losses need not have been offset.

**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. Until the end of the 2011 fiscal year, the deduction may not generate a tax-loss carryforward and previous tax losses must have been offset. Effective for the 2011 fiscal year only, the deduction can be claimed only if the dividend recipient owns at least 10% of shares in the payer of the dividends. Effective from 1 January 2012, the deduction may generate a tax-loss carryforward and previous tax losses need not have been offset.

Withholding tax is imposed on dividends paid to nonresidents. The rate is 18% for companies and 20% 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 through a tax credit against Icelandic income tax at the discretion of the Director of Internal Revenue. 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.

**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 either the declining-balance method or the straight-line method. The straight-line method applies to buildings, expendable natural resources and the right of ownership of valuable intellectual properties, including copyright, publishing rights, patent rights and brand rights. The declining-balance method applies to ships, aircraft, vehicles and machinery. 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

<b>Assets</b>	<b>Rate (%)</b>
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 following table 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	
Higher rate	25.5
Lower rate for hotels, books and publications, food products, heating of houses and road tolls	7
Social security contributions, paid by the employer on gross payroll (2011 rate)	8.65
Commodity tax; on certain goods, including vehicles and fuel	Various

#### **E. Foreign-exchange controls**

Comprehensive capital controls were introduced in November 2008. Currently, the measures are scheduled to expire at the end of December 2013. The ability to shift between the Icelandic króna and foreign currency is restricted. Bonds and similar instruments denominated in Icelandic króna may not be converted to foreign currency on maturity. The restrictions apply both to residents and nonresidents. Transactions that facilitate imports and exports of goods and services are allowed. The following items are generally exempt from the restrictions:

- Payments of dividends and interest
- Payment of claims from a bankruptcy estate
- Payments of contractual claims under a creditor agreement

Nonresidents may directly invest in most industries in Iceland, but they must notify Seðlabanki Íslands (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.

**F. Treaty withholding tax rates**

	Dividends		Interest %	Royalties %
	A (a) %	B %		
Belgium	5	15	0 (h)	0
Canada	5	15	0 (h)	0/10 (b)
China	5 (c)	10	0 (h)	10
Czech Republic	5 (c)	15	0	10
Denmark (d)	0	15	0	0
Estonia	5 (c)	15	0 (h)	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
Greece	5 (c)	15	0 (h)	10
Greenland	5 (c)	15	0	15
Hungary	5 (c)	10	0	10
India	10	15	0 (h)	10
Ireland	5 (c)	15	0	0/10 (b)
Italy	5	15	0	10
Korea (South)	5	15	0 (h)	0/10 (b)
Latvia	5 (c)	15	0 (h)	5/10 (b)
Lithuania	5 (c)	15	0 (h)	5/10 (b)
Luxembourg	5 (c)	15	0	0
Malta	5	15	0	5
Mexico	5	15	0 (h)	10
Netherlands	0	15	0	0
Norway (d)	0	15	0	0
Poland	5 (c)	15	0	10
Portugal	10 (c)	15	0 (h)	10
Romania	5 (c)	10	0 (h)	5
Russian Federation	5 (c)	15	0	0
Slovak Republic	5 (c)	10	0	10
Spain	5 (c)	15	0 (h)	5
Sweden (d)	0	15	0	0
Switzerland	5 (c)	15	0	0
Ukraine	5 (c)	15	0 (h)	10
United Kingdom	5	15	0	0
United States	5	15	0	0/5 (b)
Vietnam	10 (c)	15	0 (h)	10
Nontreaty countries	18	18	18 (f)	20 (g)

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 lower rate applies to copyrights (except for films and similar items), computer software, patents and know-how. The higher 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) An 18% withholding tax is imposed on interest paid to nonresident entities unless, on application, the Director of Internal Revenue grants an exemption from withholding tax. A 20% withholding tax is imposed on interest paid to nonresident individuals. Alternatively, the withholding tax may be refunded.

(g) Royalties paid to nonresidents are subject to withholding tax at a rate of 20%. 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.

- (h) Under the Icelandic tax law, an 18% withholding tax is imposed on interest paid to nonresident entities, unless an applicable double tax treaty provides that only the state of domicile of the beneficial owner of the interest has the right to tax the interest income. Under the double tax treaties between Iceland and Belgium, Canada, China, Estonia, India, Korea (South), Latvia, Lithuania, Portugal, Ukraine and Vietnam, the source state may impose a 10% tax on interest. Under the double tax treaties between Greece and Iceland, the source state may impose an 8% tax on interest. Under the double tax treaty between Iceland and Romania, the source state may impose a 3% tax on interest. Under the double tax treaty between Iceland and Spain, the source state may impose a 5% tax on interest. As a result, these treaty countries may apply an applicable withholding tax rate on interest paid to residents of Iceland.

A double tax treaty with the British Virgin Islands has been signed and is awaiting ratification. Tax information and exchange agreements are in force with the Cayman Islands, Guernsey, the Isle of Man and Jersey.

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**A. At a glance**

Domestic Company Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	20 (a)(b)
Branch Tax Rate (%)	40 (a)(c)
Withholding Tax (%)	
Dividends	0
Interest	
Paid to Domestic Companies	10
Paid to Foreign Companies	20 (a)(d)
Royalties from Patents, Know-how, etc.	10 (a)(e)
Technical Services Fees	10 (a)(e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	8 (f)

- (a) The rates are subject to an additional levy consisting of a surcharge and a cess. They are increased by a surcharge of 5% of such taxes in the case of domestic companies and 2% in the case of foreign companies. However, no surcharge is payable if the net income does not exceed INR 10 million. The tax payable (inclusive of the surcharge, as applicable) is further increased by a cess levied at 3% of the tax payable. The withholding tax rates are increased by a surcharge and cess (as stated above) for payments made to foreign companies only.
- (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%, as applicable, and the 3% cess).
- (e) The 10% rate (plus the 2% 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. However, if the royalties or technical services fees paid under the agreement are effectively connected to a permanent establishment or fixed place of the nonresident recipient in India, the payments are taxed on a net income basis at a rate of 40% (plus the 2% 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.** A domestic company is defined for tax purposes as a company incorporated in India. The definition also includes a company incorporated outside India (foreign company) if the company has made certain arrangements for declaration and payment of a dividend in India. The tax rates in India are specified with reference to a domestic company. As a result, it is possible for a foreign company to be taxed at rates applicable to a domestic company if it has made the necessary arrangements for the declaration and payment of a dividend in India.

A company resident in India 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. As a result, if the control and management of a foreign company is located wholly in India, it is subject to tax in India on its worldwide income. If such a foreign company also qualifies as a domestic company (see above), the tax rates applicable to a domestic company apply.

**Rates of corporate tax.** For the income year ending 31 March 2012, domestic companies are subject to tax at a basic rate of 30%. In addition, a 5% 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 32.445% on the total income. Long-term capital gains are taxed at special rates (see *Capital gains*).

For foreign companies, the effective tax rate is 42.02% (basic rate of 40% plus the 2% surcharge and the 3% cess). A rate of 10.506% (basic rate of 10% plus the 2% 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 if the royalty or technical services fees agreement is approved by the central government or if it is in accordance with the Industrial Policy. A rate of 21.012% (basic rate of 20% plus the 2% surcharge and the 3% cess) applies to gross interest from foreign-currency loans.

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 42.02% (basic rate of 40% plus the 2% 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 or operating and maintaining or developing, operating and maintaining 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 and operate the infrastructure facility on or after 1 April 1995.
  - Developing, developing and operating or maintaining and operating industrial parks during the period of 1 April 1997 through 31 March 2011.

- Generation or generation and distribution of power if the company begins to generate power at any time during the period of 1 April 1993 through 31 March 2012.
- Starting transmission or distribution by laying a network of new transmission or distribution lines at any time during the period of 1 April 1999 through 31 March 2012.
- Undertaking substantial renovation and modernization (at least 50% increase in book value of plant and machinery) of an existing network of transmission or distribution lines during the period of 1 April 2004 through 31 March 2012.

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 the tax holiday. 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.

- A 7-year tax holiday equal to 100% of taxable profits for an undertaking that begins commercial production of mineral oil and natural gas in blocks licensed under certain specified circumstances or that begins refining mineral oil during the period of 1 October 1998 through 31 March 2012. The deduction for commercial production of mineral oil is not available for blocks licensed under a contract awarded after 31 March 2011.
- A 10-year tax holiday equal to 100% of profits and gains derived by an undertaking or enterprise from the business of developing a Special Economic Zone (SEZ) notified (through an official publication by the government of India) after 1 April 2005, subject to certain conditions.
- A 5-year tax holiday equal to 100% of taxable profits derived from operating and maintaining a hospital in the following locations:
  - A rural area if such hospital is constructed during the period of 1 October 2004 through 31 March 2008.
  - Anywhere in India, other than in locations that are specifically excluded, if such hospital is constructed during the period of 1 April 2008 through 31 March 2013, subject to the fulfillment of 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 undertakings that begin to operate on or after 1 April 2001. A similar tax holiday is available with respect to profits from the business of processing, preserving and packaging of meat and meat products, poultry or marine or dairy products, if such business begins to operate after 1 April 2009.
- A tax deduction equal to 100% of profits derived from exports of articles, things or computer software by the following types of undertakings:
  - Undertakings located in free-trade zones.
  - Technology parks for hardware and software or SEZs.
  - 100% export-oriented undertakings.

The deduction is calculated by applying to taxable income the ratio of export turnover to total turnover. The deduction is available up to the 2011-12 fiscal 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 fiscal 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 the export of articles, things or services provided is available. For the following 5 years, a tax deduction equal to 50% of the profits is available. For the next 5 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.
- 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 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 depreciation).
- A 5-year tax holiday equal to 100% of the profits from the business of collecting and processing or treating of biodegradable waste for either of the following purposes:
  - Generating power or producing biofertilizers, biopesticides or other biological agents.
  - Producing biogas or making pellets or briquettes for fuel or organic manure.
- Accelerated deduction of capital expenditure (other than expenditure on the acquisition of land, goodwill or financial instruments) incurred, wholly and exclusively for certain specified businesses in the year of the incurrence of such expense. Expense incurred before the commencement of business is allowed as a deduction on the commencement of the specified business. The following are the specified businesses:
  - Setting up and operating a cold chain facility or setting up and operating a warehousing facility for storage of agricultural produce, if operations begin on or after 1 April 2009.
  - Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution including storage facilities that are an integral part of such network, if operations begin on or after 1 April 2007.

- Building and operating in India a new hotel with a two-star or above category, as classified by the central government, if operations begin on or after 1 April 2010.
- Building and operating in India a new hospital with at least 100 beds for patients, if operations begin on or after 1 April 2010.
- Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the government, if operations begin on or after 1 April 2010.
- Developing and building a housing project under a scheme for affordable housing framed by the central or state government in accordance with the prescribed guidelines, if operations begin on or after 1 April 2011.
- Production of fertilizers in a new plant or newly installed capacity in an existing plant, on or after 1 April 2011.

**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 18% of its book profit. In such cases, MAT is payable at a rate of 19.467% (basic rate of 18% plus the surcharge of 5% and the cess of 3%) of adjusted book profit. The surcharge applies only if the book profit exceeds INR 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 key items:

- Amount of income tax (including dividend distribution tax, any interest charged under the Income Tax Act, surcharge and cess) 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
- Amount of expenditure related to exempt income
- Amount of depreciation
- Amount of deferred tax and the provision for such tax, if debited to the profit-and-loss account
- Amounts set aside as a provision for diminution in the value of any asset

The net profit is decreased by the following key items:

- Amount withdrawn from any reserves or provisions if such amount is credited in the profit-and-loss account.
- Amount of losses carried forward (excluding depreciation) or unabsorbed depreciation, whichever is less, according to the books of account.
- 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.
- Amount of depreciation debited to the profit-and-loss account excluding depreciation on account of revaluation of assets.

- Amount of deferred tax, if any such amount is credited to the profit-and-loss account.

MAT paid by companies 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 10 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.

Effective from 1 April 2012, MAT provisions 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 SEZ or by a developer in a SEZ.

A report in a prescribed form that certifies the amount of book profits must be obtained from a chartered accountant.

### **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.* 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 15% plus the surcharge, as applicable, and the 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 sales of shares and units of mutual funds that have 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 cess).

Type of taxpayer	Short-term capital gains rate (%)*	Long-term capital gains rate (%)*
Domestic companies	30	20
FII's	30	10
Nonresidents other than FII's	40	20

\* The above rates are subject to a surcharge and cess. The surcharge is levied at a rate of 5% for domestic companies and at a rate of 2% for foreign companies, if the net income of the company exceeds INR 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 companies 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 companies 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 computing 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 pre-determined 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.
- 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 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 30 September or 30 November (for companies undertaking international transactions; see the discussion of transfer pricing in Section E). 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 for a fiscal year 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	10
Commissions from sales of lottery tickets	10
Other specified commissions	10
Payments to contractors (other than under advertising contracts)	2

Type of payment	Rate (%) (a)
Payments to contractors and subcontractors	2
Rent	2/10 (b)
Income from lotteries and horse races	30
Professional and technical service fees	10
Royalties	10
Payments of compensation to residents for the compulsory acquisition of certain immovable property	10

(a) The Permanent Account Number (PAN) is a unique identity number assigned to a taxpayer in India on registration with the India tax authorities. Effective from the 2010-11 fiscal year, if the income recipient fails to furnish its PAN, tax must be withheld at the higher of the rate specified in the relevant provision of the Income Tax Act and 20%.

(b) The withholding tax rate for rental payments is 10%. For equipment rental, the rate is 2%.

Nondomestic companies are subject to the following withholding taxes.

Type of payment	Rate (%) (a)(b)
Dividends	0
Interest on foreign-currency loans	20
Royalties and technical services fees	10 (c)
Rent	40
Income from lotteries and horse races	30
Long-term capital gains other than exempt gains	20
Other income	40

(a) The 2% surcharge, as applicable, and the 3% cess are imposed on the above withholding taxes.

(b) Effective from the 2011-12 fiscal year, if the income recipient fails to furnish a PAN to the payer, tax must be withheld at the higher of the following rates:

- Rate specified in the relevant provision of the Income Tax Act
- Tax treaty rate
- 20%

(c) See footnote (e) to Section A.

**Dividends.** Dividends paid by domestic companies are exempt from tax in the hands of the recipients. However, domestic companies must pay a dividend distribution tax (DDT) at a rate of 16.223% (basic rate of 15% plus the 5% 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.

It is possible to mitigate the cascading impact of DDT to a certain extent. The amount of dividends (on which DDT is leviable) that are paid by a domestic company can be reduced by the amount of dividends received from its subsidiary on which the subsidiary has paid DDT, subject to the satisfaction of prescribed conditions.

DDT is also payable for dividends declared, distributed or paid on or after 1 June 2011, by a unit of SEZ or by a developer of SEZ.

Effective from the 2011-12 fiscal year, dividends declared, distributed or paid by specified foreign companies and received by domestic companies are taxable at a rate of 15% (plus 5% surcharge and 3% cess).

**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 in certain cases) 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, 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*
Motor buses, motor lorries and motor taxis used in a rental business	30
Motor 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 aircraft) 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 (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 a "demerger," 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 carryforward 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, a ship or a hotel.
- The amalgamating company has been engaged in business for at least three years and incurred the accumulated business loss or 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 that acquires 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 apply 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 its taxable income is treated as income for the year in which the failure to fulfill any of the above conditions 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 following table 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	Various
Customs duty, on goods imported into India; levied by the central government	Various
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; generally referred to as “value-added tax”) on intrastate sales	Various

Nature of tax	Rate (%)
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 INR 3 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, information technology services, telecommunication services and services performed by consulting engineers and management consultants; rate includes the 3% cess	10.3

## 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.
- 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
- Any other method prescribed by the Central Board of Direct Taxes (CBDT)

The CBDT has issued regulations for applying these methods to determine arm's length prices. In addition, the CBDT may issue safe harbor rules indicating the circumstances in which tax officers will accept the transfer prices declared by taxpayers.

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 30 November in such circumstances.

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.
- 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. In addition, foreign-exchange regulations prescribe that the debt-to-equity ratio should not exceed 4:1 in the case of borrowings beyond a certain limit from certain nonresident lenders.

## 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 (h)	Interest	Approved royalties (g)
	%	%	%
Armenia	0	10 (b)	10
Australia	0	15	10 (d)(e)
Austria	0	10 (b)	10
Bangladesh	0	10 (b)	10
Belarus	0	10 (b)	10 (d)
Belgium	0	15 (b)	10 (c)
Botswana	0	10 (b)	10
Brazil	0	15 (b)	10 (d)
Bulgaria	0	15 (b)	10 (d)
Canada	0	15 (b)	10 (d)(e)
China	0	10 (b)	10
Cyprus	0	10 (b)	10 (d)
Czech Republic	0	10 (b)	10
Denmark	0	15 (b)	10 (d)
Egypt (i)	0	20 (a)	10 (d)
Ethiopia (f)	0	10 (b)	10
Finland	0	10 (b)	10 (d)(e)
France	0	10 (b)(c)	10 (c)
Germany	0	10 (b)	10
Greece	0	20 (a)	10 (d)
Hungary	0	10 (b)(c)	10 (c)
Iceland	0	10 (b)	10
Indonesia	0	10 (b)	10 (d)
Ireland	0	10 (b)	10
Israel	0	10	10
Italy	0	15 (b)(j)	10 (d)(j)
Japan	0	10 (b)	10
Jordan	0	10 (b)	10 (d)
Kazakhstan	0	10 (b)	10
Kenya	0	15 (b)	10 (d)
Korea (South)	0	15 (b)	10 (d)
Kuwait	0	10 (b)	10
Kyrgyzstan	0	10 (b)	10 (d)
Libya	0	20 (a)	10 (d)
Lithuania (k)	0	10 (a)	10
Luxembourg	0	10 (b)	10
Malaysia	0	10 (b)	10
Malta	0	10 (b)	10 (d)
Mauritius	0	20 (a)(b)	10 (d)
Mexico	0	10	10
Mongolia	0	15 (b)	10 (d)
Montenegro	0	10 (b)	10
Morocco	0	10 (b)	10
Mozambique (l)	0	10 (b)	10
Myanmar	0	10 (b)	10
Namibia	0	10 (b)	10
Nepal (m)	0	15 (b)	10 (d)
Netherlands	0	10 (b)(c)	10 (c)
New Zealand	0	10 (b)	10
Norway	0	15 (b)	10 (d)

	<b>Dividends (h)</b>	<b>Interest</b>	<b>Approved royalties (g)</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Oman	0	10 (b)	10 (d)
Philippines	0	15 (b)	10 (d)
Poland	0	15 (b)	10 (d)
Portugal	0	10 (b)	10
Qatar	0	10 (b)	10
Romania	0	15 (b)	10 (d)
Russian Federation	0	10 (b)	10
Saudi Arabia	0	10 (b)	10
Serbia	0	10 (b)	10
Singapore	0	15 (b)	10 (e)
Slovenia	0	10 (b)	10
South Africa	0	10 (b)	10
Spain	0	15 (b)	10 (c)(d)(e)
Sri Lanka	0	10 (b)	10
Sudan	0	10 (b)	10
Sweden	0	10 (b)	10
Switzerland	0	10 (b)	10
Syria	0	10 (b)	10
Taiwan (n)	0	10 (b)	10
Tajikistan	0	10 (b)	10
Tanzania	0	12.5 (b)	10 (d)
Thailand	0	20 (a)(b)	10 (d)
Trinidad and Tobago	0	10 (b)	10
Turkey	0	15 (b)	10 (d)
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)	10 (d)(e)
United States	0	15 (b)	10 (d)(e)
Uzbekistan	0	15 (b)	10 (d)
Vietnam	0	10 (b)	10
Zambia	0	10 (b)	10
Nontreaty countries	0	20 (a)	10/40 (d)(e)

- (a) This rate (plus the 2% surcharge, as applicable, and the 3% cess) applies to interest on monies borrowed, or debt incurred, in foreign currency. Other interest is taxed at a rate of 40% (plus the 2% 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) A 10% tax rate (plus the 2% surcharge, as applicable, and the 3% cess) applies under the Income Tax Act (Indian domestic tax law) on royalties paid to foreign companies under agreements that are approved by the Government of India or are in accordance with the Industrial Policy and that are entered into after 1 June 2005. If the agreement was entered into before 1 June 2005, the tax rate varies from 20% to 30% (plus surcharge and cess). 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% surcharge, as applicable, and the 3% cess). Royalties that are 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% surcharge, as applicable, and the 3% cess).
- (e) A 10% rate applies to royalties relating to the use of industrial, commercial or scientific equipment and technical or consultancy services that are ancillary and subsidiary to the application or use of such equipment.

- (f) The tax treaty between India and Ethiopia was signed on 25 May 2011, but it is not yet in force.
- (g) 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.
- (h) Under the Indian domestic tax 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 16.223% (basic rate of 15% plus the 5% surcharge and the 3% cess) on dividends declared, distributed or paid by them.
- (i) The official name of Egypt is the United Arab Republic.
- (j) The tax rate applicable on interest and royalties is reduced to 10% as per the Press Information Bureau press release, dated 13 January 2006. The text of the treaty is yet to be notified.
- (k) The tax treaty between India and Lithuania was signed on 25 May 2011, but it is not yet in force.
- (l) The tax treaty between India and Mozambique was signed on 30 September 2010, but it is not yet in force.
- (m) The revised tax treaty between India and Nepal was signed on 27 November 2011, but it is not yet in force.
- (n) The tax treaty between India and Taiwan entered into force on 12 August 2011 and is effective in India from 1 April 2012.

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**A. At a glance**

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	– (b)
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)
Other Payments for the Use of Assets	2 (e)
Fees for Services	
Payments to Residents	
Technical, Management and Consultant Services	2 (e)
Construction Contracting Services	2/3/4 (f)
Construction Planning and Supervision	4/6 (f)
Other Services	2 (e)
Payments to Nonresidents	20 (g)
Branch Profits Tax	20 (h)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 to 10 (i)

(a) This rate also applies to Indonesian permanent establishments of foreign companies. 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. It is imposed on the gross amount paid to residents. An increase of 100% of the normal withholding tax rate is imposed on taxpayers subject to this withholding tax that do not possess a Tax Identification Number.
- (f) This tax is considered a final tax. It is effective from 1 January 2008 (with certain transitional rules). The applicable tax rate depends on the type of service provided and the “qualification” of the construction companies. The “qualification” is issued by the authorities with respect to the business scale of a construction company (that is, small, medium or large).
- (g) This is a final tax imposed on the gross amount paid to nonresidents. The withholding tax rate on certain types of income may be reduced under double tax treaties.
- (h) This is a final tax imposed on the net after-tax profits 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.
- (i) Losses incurred by certain businesses or incurred in certain areas may be carried forward for up to 10 years (see Section B).

## B. Taxes on corporate income and gains

**Corporate income tax.** Companies incorporated or domiciled in Indonesia are subject to income tax on worldwide income. Foreign tax may be claimed as a tax credit subject to a limitation rule (see *Foreign tax relief*). 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 establishment 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.** Corporate tax is imposed at a flat rate of 25%. This rate applies to Indonesian companies and foreign companies operating in Indonesia through a permanent establishment. The tax rate is reduced by five percentage points for listed companies that have at least 40% of their paid up capital traded on the stock exchange. Small and medium-scale domestic companies (that is, companies having gross turnover of up to IDR 50 billion) are entitled to a 50% reduction of the tax rate. The reduced rate applies to taxable income corresponding to gross turnover of up to IDR 4,800,000,000.

**Branch profit tax.** The net after-tax profits of a permanent establishment are subject to branch profit tax at a rate of 20%. This rate may be reduced under a double tax treaty. Branch profit tax applies regardless of whether the income is remitted to the head office. The payment of branch profit tax may be avoided if the income is reinvested in Indonesia in shares of foreign-investment companies or in fixed assets in Indonesia.

**Tax incentives.** 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 certain conditions.
- Reduced tax rate of 10% (or lower rate under a double tax treaty) for dividends paid to nonresidents.
- 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, 23 categories of business sectors and 15 other categories of types of industries in certain areas may qualify for the tax incentives. The designated areas and provinces are generally outside Java. They are primarily the northeastern provinces and provinces located in Sulawesi. During the six-year period beginning with the granting of the tax incentives, certain restrictions apply to the use and transfer of fixed assets to which the incentives had been applied. The incentives can be revoked if these rules are violated. Implementation of the government regulation is evaluated within two years from the date on which the approval is granted. A monitoring team will be established for this purpose.

In 2011, a tax incentive commonly known as “Tax Holiday” was introduced. The Tax Holiday incentive offers a corporate income tax exemption for a period of 5 to 10 years, followed by a corporate income tax reduction of 50% for 2 years. The Minister of Finance may grant an additional period of concession to maintain the competitiveness of national industry and the strategic value of certain industries.

To qualify for the Tax Holiday incentive, taxpayers must fulfill all of the following criteria:

- They must be engaged in a “pioneer industry” (see below).
- They must have new investment plans approved by the relevant authority in the minimum amount of IDR 1 trillion (approximately US\$120 million).
- They must deposit at least 10% of their total investment plan in the Indonesian banking system without any withdrawal until realization of their investment.
- They must be in the form of an Indonesian legal entity established either within 12 months before the issuance of the regulation or after the enactment of the regulation.

The term “pioneer industries” is defined to be industries that meet the following conditions:

- They have extensive interconnection and provide high value-added and externality.
- They introduce new technology.
- They have strategic value for the nationwide economy.

The regulation pertaining to the Tax Holiday incentive requires that the country of domicile of the foreign investors have tax-sparing rules.

Currently, five sectors qualify as pioneer industries.

Taxpayers that have received tax incentives for investments in certain types of businesses or regions are not eligible for the Tax Holiday incentive and vice versa.

**Special tax rates.** Special tax rates granted to certain companies are 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 branch profit tax of 20% on their taxable income.

*Mining.* Income tax applicable to general mining companies may depend on generation of the concessions granted (that is, when the concession is granted). Holders of earlier concessions are taxed at the rates ranging from 30% to 45% (the tax rates are the rates prevailing at the time the concession was granted). Holders of the more recent concessions are taxed in accordance with the prevailing tax laws (current rate is 25%). Although withholding tax on dividends paid overseas is generally imposed at a rate of 20%, some earlier concessions provide a reduced rate of 10%. These rates may be subject to reduction under certain tax treaties.

*Construction companies.* Construction companies are subject to corporate income tax with tax rates ranging from 2% to 6% of the contract value. The income tax applies to complete or partial construction activities. The applicable tax rate depends on the business qualification of the respective company and/or the type of services performed. The tax is final. Consequently, no corporate income tax is due on the income at the end of a fiscal year. Foreign construction companies operating in Indonesia through a branch or a permanent establishment are subject to further branch profit tax of 20% on the taxable income (accounting profit adjusted for tax) after deduction of the final tax. The rate is subject to applicable tax treaties. Branch profit tax may be avoided in the circumstances described above (see *Branch profit tax*).

*Foreign drilling companies.* Foreign drilling companies are subject to corporate income tax at a rate of 3.75% of their gross drilling income, as well as to branch profit tax of 20% on their after-tax taxable income. The branch profit tax may be reduced under certain tax treaties. Branch profit tax may be avoided in the circumstances described above (see *Branch profit tax*).

*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 (inclusive of branch profit tax). As a result of the recent reduction of the corporate tax rate, the effective tax rate may change. However, this has not yet been confirmed through the issuance of a tax regulation.

**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 rate.

Capital gains derived by residents are included in taxable income and are subject to tax at the normal income tax rate. 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 equals 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.

In addition to sales or transfers of shares, Indonesian tax applies a 20% tax rate to an estimated net income of 25% on sales or transfers of certain assets owned by non-Indonesian tax residents that do not have a permanent establishment in Indonesia. The assets are luxurious jewelries, diamonds, gold, gemstones, luxurious watches, antiques, paintings, cars, motorcycles, yachts and/or light aircraft. This results in an effective tax rate of 5%. The purchaser must withhold the tax. A tax exemption applies to transactions with a value of less than IDR 10 million. The provisions of tax treaties override the above regulation.

The sale or transfer by nonresidents of shares in conduit companies or special purpose companies established or resident in tax-haven jurisdictions that have a special relationship with an Indonesian entity or an Indonesian permanent establishment of a foreign entity is deemed to be a sale or transfer of shares of the Indonesian entity or the permanent establishment. The relevant regulation provides that the Indonesian income tax applicable to the transaction is 5% of the gross sale proceeds. The 5% rate is derived from the application of the 20% cross-border withholding tax under Article 26 of the Income Tax Law to a profit that is deemed to be 25% of the gross sale proceeds. A provision in an applicable tax treaty overrides the above rule if the seller of the shares is a tax resident in a country that has entered into a tax treaty with Indonesia.

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.** The annual corporate income 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.

Corporate income tax must be paid in advance through monthly installments, which are due on the 15th day of the month following the relevant month. The tax installment equals 1/12 of tax payable for the preceding year (after exclusion of non-regular income) or tax payable based on the latest tax assessment received.

**Dividends.** In general, dividends are taxable.

Dividends paid domestically to Indonesian resident corporate taxpayers are subject to withholding tax at a rate of 15%. This tax is an advance payment of the dividend recipient's tax liability. Tax exemption may apply if the dividends are paid from retained earnings and if the recipient's share ownership in the payer of the dividends represents 25% or more of the paid-in capital. Dividends exempted from tax are not subject to the 15% withholding tax.

Dividends received by Indonesian resident individuals are subject to a final tax with a maximum rate of 10%.

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 on a country-by-country basis.

### C. Determination of trading income

**General.** Income is broadly defined. It includes, but is not limited to, the following:

- Business profits
- Gains from sales or transfers of assets
- Interest, dividends, royalties and rental and other income with respect to the use of property
- Income resulting from reorganizations, regardless of the name or form
- Gains from sales or transfers of all or part of a mining concession, funding participation or capital contribution of a mining company
- Receipt of a tax refund
- Income earned by *syariah*-based businesses (*syariah* refers to businesses conducted in accordance with the Islamic law)
- Interest compensation
- Surplus of the Bank Indonesia

Certain income is not taxable or is subject to a final tax regime. Interest earned by resident taxpayers 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 directly or indirectly incurred in earning taxable income. Nondeductible expenses include the following:

- Income tax and penalties
- Expenses incurred for the private needs of shareholders, associates or members
- Gifts
- Donations (except for donations for national disasters, grants in the framework of research and development activities in Indonesia, grants for the development of social infrastructure, grants in the form of education facilities [for example, books, computers, chairs, tables and other educational resources] and grants for the development of sport)
- Benefits-in-kind, which include a subsidy, aid, gift or award given to an employee or a related party
- Reserves and provisions for certain industries

Business losses incurred overseas are not deductible.

Foreign-exchange gains and losses are treated as taxable income and deductible expenses, if this treatment is in accordance with the generally accepted accounting procedures in Indonesia and is consistently adopted.

**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.

Certain taxpayers that may claim bad debt provisions as deductible expenses include banks and certain nonbank financial institutions, such as other corporate entities providing loan facilities, insurance companies, leasing companies that lease assets under finance leases, consumer financing companies, and factoring companies. The following companies may also claim tax deductions for reserves or provisions:

- Social insurance providers: reserves of social funds
- Forestry companies: reserves for reforestation
- Mining companies: reserves for reclamation of mining sites
- Industrial waste treatment companies: reserves for closure and maintenance of waste treatment plants

Taxpayers may claim tax deductions for bad debts if all of the following conditions are satisfied:

- The costs have been claimed as corporate losses in commercial financial reports.
- A list of the names of the debtors and totals of the bad debts is submitted to the Director General of Taxation.
- A legal suit for collection of the debt is filed with the public court or government institutions handling state receivables. Alternatively, taxpayers may publicize the bad debt in a general or special publication or obtain acknowledgment of the write-off of the bad debt from the relevant debtor.

The write-off of receivables from a related party is not deductible for tax purposes.

**Depreciation and amortization allowances.** Depreciation is calculated on the useful life of an asset by applying the straight-line method or 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 (%)	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 (see Section B).

**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 10 years (see Section B).

**Groups of companies.** The losses of one company may not be used to reduce the profits of an affiliate.

#### D. Other significant taxes

The following table 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
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 200
Transfer duty on land and buildings	5

#### E. Miscellaneous matters

**Foreign-exchange controls.** No exchange controls affect the repayment of loans and the remittance of dividends, interest and royalties. Remittance of funds of US\$10,000 or more must be notified by the remitting bank to the Bank Indonesia. Foreign loans must be reported to the Bank Indonesia to enhance the monitoring of the country's foreign exchange reserves.

**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. However, to date, the Minister has not yet prescribed the required debt-to-equity ratio. If a special relationship between two taxpayers that might provide tax advantages exists, the Director General of Taxation has the authority to determine income and deductions and to reclassify loans as equity.

**Transfer pricing.** The law provides that the following methods may be used to determine arm's length pricing:

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

The Indonesian tax authority requires that related-party transactions or dealings with affiliated companies be carried out in a "commercially justifiable way" and on an arm's length basis. Taxpayers must maintain documentation establishing that related-party transactions are conducted at arm's length. The transfer-pricing study must be maintained for 10 years from the relevant tax year.

The Indonesian tax authority uses advance pricing agreements (APAs) to regulate transactions between related parties and to mitigate future transfer-pricing disputes with the Director General of Taxation. 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

Indonesia has introduced tough anti-treaty abuse rules. The Indonesian Tax Authority may ignore the provisions of a tax treaty if these rules are not satisfied.

The Indonesian tax authority may seek agreement with a tax treaty country for the exchange of information, mutual agreement procedure and assistance for tax collection.

The following table shows withholding tax rates under Indonesia's double tax treaties.

	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				
Darussalam	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)
Hong Kong				
SAR (d)	10	5	10	5
Hungary	15	15	0/15	15
India	15	10	0/10	15
Iran	7	7	0/10	12
Italy	15	10	0/10	10/15 (c)
Japan	15	10	0/10	10
Jordan	10	10	0/10	10
Korea (North)	10	10	0/10	10
Korea (South)	15	10	0/10	15
Kuwait	10	10	0/5	20
Luxembourg	15	10	0/10	12.5 (a)
Malaysia	10	10	0/10	10
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

	Dividends (%)		Interest (b)	Royalties
	A	B	%	%
Norway	15	15	0/10	10/15 (c)
Pakistan	15	10	0/15	15 (a)
Papua New Guinea	20	15	0/10/15	15 (d)
Philippines	20	15	0/10/15	15
Poland	15	10	0/10	15
Portugal	10	10	0/10	10
Qatar	10	10	0/10	5
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
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	10 (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	15	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) The tax treaty is subject to exchange of ratification documents by both governments.

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.

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**A. At a glance**

Corporate Income Tax Rate (%)	15/35 (a)
Capital Gains Tax Rate (%)	15/35 (a)
Branch Tax Rate (%)	15/35 (a)
Withholding Tax (%)	
Dividends	0
Interest	15 (b)
Royalties	15 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (c)

- (a) The 15% rate is the general corporate income tax rate. The 35% rate applies to oil and gas production and extraction activities and related industries, including service contracts.
- (b) This withholding tax is imposed on payments to nonresidents.
- (c) See Section C.

**B. Taxes on corporate income and gains**

**Corporate income tax.** In general, corporate income tax is imposed on taxable profit from all sources arising in, or deemed to arise in, Iraq. Income is deemed to arise in Iraq if any of the following is located there:

- The place of performance of work
- The place of delivery of work
- The place of signing the contract
- The place of payment for the work

Otherwise, companies are exempt from tax for Iraqi income tax purposes.

**Tax rates.** The general corporate income tax rate applicable to all companies (except oil and gas production and extraction activities and related industries, including service contracts) is a unified flat rate of 15% of taxable income. Activities relating to oil and gas production and extraction activities and related industries, including service contracts, are subject to income tax at a rate of 35% of taxable income.

**Capital gains.** Capital gains derived from the sale of fixed assets are taxable at the normal corporate income tax rate of 15% (the rate is 35% for certain activities; see *Tax rates*). Capital gains derived from the sale of shares and bonds not in the course of a trading activity are exempt from tax; otherwise, they are taxed 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.

A rate of 10% of the tax due is imposed as a delay fine, up to a maximum of IQD 500,000, on a taxpayer that does not submit, or refuses to submit, an income tax return within five months after the financial year end.

An additional penalty of IQD 10,000 is imposed on foreign branches that fail to submit final accounts.

If the tax due is not paid within 21 days after the date of notification, an additional penalty of 5% of the amount of tax due is imposed. This amount is doubled if the tax is not paid within 21 days after the lapse of the first period.

**Dividends.** In general, dividends received are exempt from tax.

**Interest.** Interest is subject to income tax at the normal rates.

**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. Excess foreign tax credits may be carried forward for five years.

### C. Determination of trading income

**General.** If income arises in Iraq from trading or any other source, or is deemed to arise in Iraq (see *Corporate income tax* in Section B), it is subject to tax, except for income exempt under 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. These rates are set out in tables for various industries. In general, the following are the acceptable depreciation methods:

- Straight line
- Declining balance
- Other methods (with the approval of the General Commission for Tax)

If the rates used for accounting purposes are greater than the prescribed rates, the excess is disallowed for tax purposes.

**Relief for losses.** A tax loss from one source of income may offset profits from other sources of income in the same tax year. Unused tax losses may be carried forward and deducted from the taxable income of the taxpayer during the following five consecutive years, subject to the following conditions:

- Losses may not offset more than half of the taxable income of each of the five years.
- The loss may offset only income from the same source from which the loss arose.
- To claim losses, appropriate documentation must be obtained including financial statements that support the loss and sufficient documentation to support the expenses that created such loss.

**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	0.2
Property tax; imposed on the annual rent	
From buildings	9
From land	2
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 (general)	12
Employer (oil and gas sector)	25
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. However, under the Central Bank of Iraq's instructions and regulations, transfers of funds must be in accordance with the Anti-Terrorism Law and the Anti-Money Laundering Law.

**Debt-to-equity rules.** The only restrictions on debt-to-equity ratios are those stated in the articles and memoranda of association.

#### F. Tax treaties

Iraq has entered into a bilateral double tax treaty with Egypt and a multilateral double tax treaty with the states of the Arab Economic Union Council.

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**A. At a glance**

Corporate Income Tax Rate (%)	12.5 (a)
Capital Gains Tax Rate (%)	30 (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 and to certain dividends received from nonresident companies. 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 were taxed at an effective rate of 10% up to 31 December 2010. For details concerning the tax 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 European Union (EU) member state or in a country with which Ireland has entered into a double tax treaty is exempt from withholding tax, subject to conditions. See footnote (p) in Section F for details regarding an extension of this exemption. Bank deposit interest is subject to a 30% or 33% deposit interest retention tax (DIRT; a 27% or 30% DIRT rate applies to payments made before 1 January 2012). DIRT exemptions apply to bank interest paid to nonresidents and, subject to certain conditions, bank interest paid to Irish resident companies and pension funds.
- (f) Ireland implemented the EU Interest and Royalties Directive, effective from 1 January 2004.
- (g) Under Irish domestic law, withholding tax on royalties applies only to certain patent royalties and to other payments regarded as “annual payments” under Irish law. The Irish Revenue has confirmed that withholding tax need not be deducted from royalties paid to nonresidents with respect to foreign patents (subject to conditions).

**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.
  - 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 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*).

**Rates of corporation tax.** The standard rate of corporation tax on trading income is 12.5%.

On election, the 12.5% rate also applies to dividends received from the following companies:

- Certain companies that are resident in an EU member state or a treaty country
- A company that is 75%-owned by a publicly quoted company

The election applies only to dividends sourced from trading income unless the dividends are portfolio dividends (less than 5% interest). In this instance, the dividends are deemed to be from a “trading” source. Foreign dividends from portfolio investments that form part of the trading income of a company are exempt from corporation tax.

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
- 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*)

Up to 31 December 2010, a reduction in the tax rate was available on income from the sale of goods manufactured in Ireland and from some service activities (such as software development and data processing), resulting in an effective rate of 10%. Effective from 1 January 2011, the 12.5% rate generally replaced the 10% rate that was available with respect to such activities.

*Start-up companies.* A three-year exemption from tax on certain trading profits and capital gains (subject to conditions) applies to companies with a total corporation tax liability (as defined) of less than €40,000 per year. This exemption applies to new companies that began trading in 2009, 2010 or 2011. A cap referring to employer social insurance costs applies from 2011. The government has proposed an extension to this relief for companies beginning to trade in 2012, 2013 or 2014.

*Land transactions.* Different tax rates apply to land transactions. Profits or gains derived from dealing in residential or nonresidential development land are subject to the higher rate of corporation tax (25%). The National Asset Management Agency Act 2009

provides for an 80% tax on profits arising from land rezoning. Most construction operations are subject to corporation tax at the standard rate of 12.5%.

*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
- 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.* A profit resources rent tax (PRRT) applies to profits on oil and gas exploration licenses awarded after 1 January 2007. The PRRT is imposed in addition to the 25% corporate tax rate, and it operates on a graduated basis that is linked to the profitability of the oil or gas field. The tax rate varies according to the profit ratio (rate of cumulative 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

*Close companies.* Investment and rental income of a “close company” is subject to an additional 20% surcharge if it is not distributed within 18 months after the end of the relevant accounting period. A closely held professional services company is subject to a 15% surcharge on 50% of its undistributed trading income. Broadly, a “close company” is a company that is under the control of five or fewer persons or under the control of its directors (as defined).

*Life insurance companies.* For life insurance business written before 1 January 2001, policyholders are subject to income tax at the standard rate (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 a rate of 33% on the difference between proceeds on redemption, maturity or assignment, and the premiums or subscription amounts paid. A 20% surcharge on personal portfolio life insurance policies (PPLPs) applies 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. These 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.

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 income tax at a rate of 30%. The 30% rate depends 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 a rate of 30%. Other payments made are subject to an exit tax at a rate of 33%. 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.

In addition to the normal exit tax, a 20% surcharge applies to personal portfolio investment undertakings (PPIUs). 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 normally 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 is generally paid by the investment undertaking which can set off the refund against future exit tax. The deemed disposal 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*). Deemed disposal rules also apply to Irish residents after every eight years.

Offshore funds domiciled in another EU member state, EEA state or a member state of the 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 25%. 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 are subject to corporation tax at a rate of 30% (except for development land gains which are subject to CGT at that rate). In computing a gain, relief is given for the effects of inflation by applying an index factor. However, indexation relief applies only for the period of ownership of an asset up to 31 December 2002.

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. 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 or corporation tax 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
- 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 corporation tax on any gains resulting from such deemed disposal. The tax is calculated in accordance with the normal CGT rules.

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.* An exemption from corporation tax 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, a minimum holding of 5% of the shares in the investee company.
- 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. Preliminary tax is payable in two installments if the company is not a "small company" (see below). The initial installment is due on the 21st day of the 6th month of the accounting period (assuming the accounting period ends after the 21st day of a month). This installment must equal the lower of 50% of the tax liability

for the preceding year or 45% of the tax liability for the current year. The final installment of preliminary tax is due 31 days before the end of the accounting period and must bring the aggregate preliminary tax payments up to 90% of the tax liability for the year. If this date falls on or after the 21st day of a month, the 21st of that month becomes the due date.

“Small companies” alternatively may 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.

A company that pays more than 45% of its corporation tax liability for a period as an initial installment of preliminary tax or more than 90% of its corporation tax liability for a period by the due date for its final installment of preliminary tax can elect jointly with another group company that has not met the 45% or 90% tests 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.

A start-up company with a corporation tax liability of less than €200,000 is relieved from having to make any corporation tax payment until its tax return filing date.

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
- 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
- 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. CGT on chargeable gains arising in the period of 1 January to 30 November must be paid by 15 December of that same year. CGT on gains arising in December of each year is 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
- 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 in an EU member country or a treaty country
- 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
- Certain qualifying intermediaries and authorized withholding agents

Effective from 1 January 2009, the above “treaty country” references are extended to any country with which Ireland has signed a double tax treaty (see footnote [p] in Section F).

Detailed certification procedures apply to some 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 woodland 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, a unilateral credit for otherwise unrelieved foreign tax on interest income 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.

If no treaty exists, a deduction for foreign tax paid is allowed against such income and gains. A unilateral credit relief is available for foreign tax deducted from royalties received by trading companies.

An Irish tax credit is available 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).

An Irish company that has branches in more than one country can pool its excess foreign tax credits between the different branches. This is beneficial if one branch suffers 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%. Unused credits can be carried forward to offset corporation tax in future accounting periods.

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.

Unilateral credit relief may be available for Irish resident companies, or Irish branches of companies resident in EEA countries (excluding Liechtenstein), that receive dividends from foreign subsidiaries. Companies are permitted to "mix" the credits for foreign tax on different dividends from 5% subsidiaries for purposes of calculating the overall tax credit in Ireland. Any unused

excess can be carried forward indefinitely and offset in subsequent periods. The subsidiaries can be located in any country. However, credits arising on dividends taxed at 12.5% are ring-fenced to prevent these tax credits from reducing the tax on the dividends taxed at the 25% rate.

Ireland has implemented the EU Parent-Subsidiary Directive (as amended). These provisions, which overlap to a significant extent with the unilateral credit relief measures described above, have been extended to Switzerland.

A company that incurs a tax liability on a capital gain in one of 10 specified countries may claim a credit for foreign tax against Irish CGT on the same gain. This unilateral credit is targeted at those countries with which Ireland has entered into double tax agreements before the introduction of CGT.

### 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 practice (GAAP), subject to adjustments required or authorized by law. For tax purposes, accounts can be prepared under Irish GAAP or International Financial Reporting Standards (IFRS). Detailed rules address any transition from Irish GAAP to IFRS.

Royalties from patents created in Ireland that were received before 24 November 2010 were exempt from tax if certain conditions were satisfied, subject to a €5 million cap. Patent royalties received after that date are subject to tax. If derived from Irish sources, income derived from commercial woodlands is exempt from tax.

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 by reference to the carbon dioxide emissions of the motor cars for vehicles hired on or after 1 July 2008.

Revenue expenditure incurred in the three years before the beginning of trading is generally deductible.

A tax deduction is available for expenditure incurred on acquiring know-how, which includes industrial information and techniques likely to assist in the manufacture or processing of goods or materials, for the purpose of a trade. The deduction is available for expenditure incurred before 7 May 2011. See *Tax depreciation (capital allowances)* for relief available on expenditure on intangible assets incurred on or after this date.

Depreciation of assets is not deductible. Instead, the tax code provides for a system of capital allowances (see *Tax depreciation [capital allowances]*).

*Share-based payments.* Consideration consisting directly or indirectly of shares in the company or a connected company that is given for goods or services or that is given to an employee or director of a company is generally not deductible except for the following:

- Expenditure incurred by the company on acquiring the shares (or rights to receive the shares)
- Payments made to a connected company for the issuance or the transfer of shares (or rights to receive the shares)

In effect, a tax deduction is denied for IFRS 2 or Financial Reporting Standard (FRS) 20 accounting costs unless these costs reflect actual payments. In addition, the timing of the tax deduction for such payments is dependent on the employees' income tax positions.

*Interest payments.* Interest on loans used for trading purposes is normally deductible on an accrual basis in accordance with its accounting treatment unless specifically prohibited.

Certain types of interest paid in an accounting period may be classified as a distribution and, consequently, are not treated as an allowable deduction. However, interest may not be reclassified if it is paid by an Irish resident company to an EU resident company or to a resident of a treaty country (on election). Such interest is allowed as a trading deduction and is not treated as a distribution, subject to certain conditions and exceptions.

Before 2003, a borrower could accrue interest on a loan and claim a tax deduction, while the lender might not be subject to tax until the interest was actually paid. However, since 2003, a tax deduction for interest accrued on a liability between connected persons (including companies and individuals) may be deferred until such time as the interest is actually paid if all of the following circumstances exist:

- The interest is payable directly or indirectly to a connected person.
- Apart from the new measure, the interest would be allowable in computing the trading income of a trade carried on by the payer.
- 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 above restriction does not apply to interest payable by an Irish company to a connected nonresident corporate lender if the lender is not under the control, directly or indirectly, of Irish residents.

Banks may deduct interest payments made to nonresident group companies in calculating trading income (that is, the payments are not reclassified as distributions).

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 nontrading purposes:

- Acquisition of shares in a rental or trading company, or a company whose business principally consists of holding shares in trading or rental companies
- Lending to the companies mentioned in the first bullet, provided the funds are used wholly and exclusively for the purpose of the trade or business of the borrower or of a connected company

Deductions of interest as a charge have always been subject to certain conditions and antiavoidance measures. These conditions and measures have added complexities to the implementation and maintenance of structures designed to qualify for this interest relief. In particular, interest relief is restricted if the borrower receives or is deemed to have received, a “recovery of capital” (as defined).

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. The 2011 Finance Act introduced measures that restrict the deductibility of interest as a trading expense and interest as a charge to the extent that an acquisition of assets from a connected company is funded by monies borrowed from another connected company.

Certain additional antiavoidance rules may apply in connected party situations.

*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.

An additional foreign-exchange matching measure 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.

**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. In general, provisions created in accordance with Financial Reporting Standard 12 are deductible for tax purposes.

#### **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%.

The maximum qualifying expenditure for capital allowances on motor vehicles is €24,000. Effective from 1 July 2008, capital allowances and leasing expense deductions for new motor cars are granted by reference to carbon dioxide emissions. As a result, some vehicles acquired on or after 1 July 2008 do not qualify for capital allowances or leasing expense tax deductions.

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. An immediate 100% write-off is also allowed for certain energy-efficient equipment.

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.

*Computer software.* If a company carrying on a trade incurs capital expenditure on the acquisition of software or a right to use software in that trade, the right and related software is regarded as plant or machinery and qualifies for capital allowances over eight years. Some computer software may qualify for tax depreciation under the intangible assets regime (see *Intangible assets*).

*Patent rights.* A company incurring capital expenditure on the purchase of patent rights for use in a trade may be entitled to writing-down allowances. Relief is given over 17 years or the life of the patent rights, whichever is the shorter. Ongoing patent royalties are typically deductible when paid (see information regarding charges in *Interest payments*). The allowances are available for expenditure incurred before 7 May 2011. See *Intangible assets* for relief available on expenditure incurred on or after this date.

*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). Transitional measures applied to certain approved projects if the expenditure was incurred on or before 31 December 2006, and reduced rates applied in certain circumstances if the expenditure was incurred in the period 1 January 2007 through 31 July 2008.

*Urban renewal schemes.* Property-based tax incentives in urban renewal areas may be available for expenditure incurred before 31 July 2008. The reliefs include accelerated capital allowances for commercial and industrial buildings.

*Telecommunication infrastructure.* Capital allowances are available 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.

*Childcare facilities.* The 100% capital allowance for childcare facilities is no longer available (subject to transitional arrangements).

*Other.* Capital allowances are also available on expenditure incurred for scientific research, dredging, mining development, ships, agricultural buildings, airport buildings, runways, and petroleum exploration, development and production. Capital allowances for expenditure incurred on private hospitals and private nursing homes are being phased out.

*Intangible assets.* Capital allowances are available on a broad range of specified intangible assets acquired on or after 8 May 2009. Capital allowances are available for expenditure incurred on many types of intangible assets including, but not limited to, brands, trademarks, patents, copyrights, designs, know-how, some computer software, pharmaceutical authorizations and related rights, licenses and attributable goodwill.

Relief is generally granted in line with book depreciation and is claimed on the annual tax return.

However, the company can elect for a 15-year write-off period, which is useful if intangible assets are not depreciated for book purposes. This election is made on an asset-by-asset basis.

The aggregate amount of allowances and related interest expense that may be claimed for any accounting period is capped at 80% of the trading income of the relevant trade for that period (excluding such allowances and interest). The residual 20% profit is taxed at normal rates. Excess allowances can be carried forward indefinitely against income of the same trade.

Allowances granted are clawed back if the asset is sold within a 10-year period.

*Patent rights and know-how.* Existing measures grant allowances for acquired patent rights over the shorter of 17 years or the duration of acquired rights. Certain know-how is deductible in full in the year of acquisition. Both of these regimes terminated for acquisitions after 6 May 2011. After that date, relief must be claimed under the new intangible asset regime (see *Intangible assets*).

**Research and development expenditures.** A corporation tax credit of 25% (20% for accounting periods beginning before 1 January 2009) is available for incremental qualifying research and development (R&D) expenditure incurred by companies for R&D activities carried on in EEA countries. 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 37.5% of R&D expenditure.

The base year used to calculate incremental expenditure is 2003. A lengthy 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 have no base-year expenditure; all qualifying R&D for these companies is incremental.

R&D credits that cannot be used in an accounting period can be carried forward indefinitely to future accounting periods. Excess R&D credits can be carried back against corporation tax paid in the immediately preceding accounting period. Any remaining excess credits may be refunded over a three-year period. This

enhancement of the R&D credit regime represents a significant cash-flow opportunity for loss-making companies. However, a 12-month time limit for R&D claims applies. R&D claims must now be made within 12 months after the end of the accounting period in which the R&D expenditure giving rise to the claim is incurred.

**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 (effectively most trades) can be offset only against profits of that accounting period or the preceding accounting period to the extent that the profits consist of trading income subject to the 12.5% rate. Any unused trading losses may be carried forward to offset future trading income derived from the same trade. The National Asset Management Agency Act 2009 contains special rules for certain financial institutions with respect to the use of losses carried forward from preceding periods. The amount available for relief is restricted to 50% of net group trading income attributed to the financial institution for the period (trades not within the charge to Irish tax are excluded from this calculation).

Relief may be available through a reduction of corporation tax on a value basis. For example, in 2011, when the standard corporation tax rate on trading income is 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.

Terminal loss relief may be available if a company incurs a loss in its last 12 months of trading. This relief allows such losses to be carried back against income of the same trade in the preceding three years.

**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.
- 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.

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). Loss relief was historically restricted to losses incurred in a business carried on by a company subject to Irish corporation tax. However, group relief is now available for certain “trapped” trading losses incurred by non-Irish 75% subsidiaries resident in an EEA country (except Liechtenstein). Losses that can be used elsewhere are ineligible for surrender.

The National Asset Management Agency Act 2009 provides for a limited form of loss surrender between certain financial institutions in the same group with respect to excess losses carried

forward from earlier periods for which the surrendering financial institution cannot obtain relief.

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, that company is deemed to have disposed of and immediately reacquired the asset at its market value at the time of its acquisition, effectively crystallizing the deferred gain.

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.
- The transferred asset must be a chargeable asset for corporation tax purposes in Ireland.

Dividends paid between Irish resident companies are not subject to DWT (see Section B) if the appropriate declarations are made. However, 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 following table 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	23
Other rates	0/4.8/5.2/9/13.5
Stamp duty, on certain documents (maximum rate)	6
Pay-related social insurance (PRSI) (for the period ending 31 December 2012), 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	4.25

Nature of tax	Rate (%)
Employees	
PRSI; on annual salary (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.)	4
Universal Social Charge (USC)	
Annual salary of up to €10,036 (exempt if income is less than €10,036)	2
Annual salary of €10,037 to €16,016	4
Annual salary in excess of €16,016 (age 70 or over)	4
Annual salary in excess of €16,016 (under age 70)	7

## 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.

**Antiavoidance rule.** A general antiavoidance rule (GAAR) empowers the Revenue Commissioners to reclassify a “tax avoidance” transaction in order to remove a tax advantage resulting from such transaction. An additional surcharge equal to 20% of the underpayment can be imposed if the reclassification is upheld and if the taxpayer had not made a “protective notification” of the “tax avoidance” transaction to the Revenue within 90 days after the beginning of the transaction.

**Transfer pricing.** Transfer-pricing legislation in Ireland is effective from 1 January 2011. The rules apply to any arrangement between associated enterprises if the transaction meets the definition of an Irish trading transaction for one or both of the parties. For the purposes of determining an arm’s length price, the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are adopted. Sufficient records must be maintained to support an arm’s length price. OECD-style documentation is sufficient.

Grandfathering provisions apply to transactions for which the terms were agreed on before 1 July 2010. Exemptions from the rules are available for small and medium-sized enterprises, which

are companies with fewer than 250 employees and turnover of less than €50 million or assets of less than €43 million.

**Construction operations.** Special withholding tax rules apply to payments made by principal contractors to subcontractors with respect to relevant contracts in the construction, forestry and meat-processing industries. Under these rules, principal contractors must withhold tax from certain payments. Effective from 1 January 2012, a new electronic system applies. Under this new system (within which all relevant contracts must be registered), withholding rates of 0%, 20% and 35% apply. Subcontractors with a valid C2 card on 25 November 2011 qualify for the 0% rate for the period of 1 January 2012 to 31 March 2012. If subcontractors are not registered with the Revenue or if serious compliance issues that need to be addressed exist, the rate is 35%. All other subcontractors should qualify for the 20% rate.

## 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 (c) %
Albania (n)	0	7 (e)	0/7
Australia	0	0/10	0/10
Austria	0	0	0
Bahrain	0	0 (b)	0
Belarus	0	0/5 (e)	0/5
Belgium	0	0/15 (m)	0
Bulgaria	0	0/5 (e)(m)	0/10 (m)
Canada	0	0/10 (l)	0/10 (d)
Chile	0	0/5/15	0/5/10 (f)
China	0	0/10 (e)	0/6/10 (j)
Croatia	0	0	0
Cyprus	0	0	0
Czech Republic	0	0	0/10 (m)
Denmark	0	0	0
Estonia	0	0/10 (e)(m)	0/5/10 (f)(m)
Finland	0	0	0
France	0	0	0
Georgia	0	0	0
Germany (s)	0	0	0
Greece	0	0/5 (m)	0/5 (m)
Hong Kong			
SAR (n)	0	0/10 (e)	0/3
Hungary	0	0	0
Iceland	0	0	0/10
India	0	0/10 (e)	0/10
Israel	0	0/10	0/10
Italy	0	0/10 (m)	0
Japan	0	0/10	0/10
Korea (South)	0	0	0
Latvia	0	0/10 (m)	0/5/10 (f)(m)
Lithuania	0	0/10 (m)	0/5/10 (f)(m)
Luxembourg	0	0	0
Macedonia	0	0	0
Malaysia	0	0/10	0/8
Malta	0	0 (m)	0/5 (m)

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties (c)</b>
	%	%	%
Mexico	0	0/5/10 (g)	0/10
Moldova	0	0/5 (e)	0/5
Montenegro (n)	0	0/10 (e)	0/5/10 (q)
Netherlands	0	0	0
New Zealand	0	0/10	0/10
Norway	0	0	0
Pakistan	0	0	0
Poland	0	0/10 (m)	0/10 (m)
Portugal	0	0/15 (m)	0/10 (m)
Romania	0	0/3 (i)(m)	0/3 (h)(m)
Russian Federation	0	0	0
Serbia	0	0/10 (e)	0/5/10 (q)
Singapore	0	0/5 (e)	0/5
Slovak Republic	0	0	0/10 (h)(m)
Slovenia	0	0/5 (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
Turkey (n)	0	0/10/15 (r)	0/10
United Arab Emirates	0	0	0
United Kingdom	0	0	0
United States	0	0	0
Vietnam	0	0/10	0/5/10/15 (k)
Zambia	0	0	0
Nontreaty countries	0/20 (o)(p)	20 (b)(p)	0/20 (c)

- (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 generally exempt from withholding tax if it is paid by a company or 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. However, this exemption may be unavailable if the recipient is resident in a country that does not generally impose a tax on interest received from foreign sources.
- (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. The Irish Revenue has confirmed that withholding tax need not be deducted from royalties paid to nonresidents with respect to foreign patents (subject to conditions). Effective from 4 February 2010, withholding tax does not apply to patent royalties paid by a company in the course of a trade or business to a company resident in a treaty country that imposes a generally applicable tax on royalties received from foreign sources (subject to conditions).
- (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)
  - 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 also 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 also 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 also 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 also 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 the right to use, industrial, commercial or scientific equipment is taxable.
- (k) The 5% rate applies to royalties paid for the use of patents, designs or models, plans, secret formulas or processes or for information concerning industrial or scientific experience. The 10% rate applies to royalties paid for the use of trademarks or information concerning commercial experience. The 15% rate applies to other royalties.
- (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 treaties with Albania, the Hong Kong SAR and Montenegro are effective from 1 January 2012.
- (o) Irish domestic law may provide for an exemption from DWT under certain circumstances (see Section B).
- (p) Ireland has signed full double tax treaties with Armenia, Bosnia-Herzegovina, Kuwait, Morocco, Panama and Saudi Arabia, but these treaties are not yet in force. However, certain withholding tax exemptions that are available to treaty countries under Irish domestic law (see footnotes [a] and [b]) may be extended to residents of these countries and to residents of any other countries with which Ireland signs a double tax treaty (beginning on the date of signing of such agreement), subject to conditions. The entry-into-force provisions in the proposed tax treaties with Bosnia-Herzegovina, Kuwait and Morocco provide that each treaty will apply for income tax and corporation tax purposes from 1 January of the year in which the treaty enters into force. Consequently, if these treaties enter into force in 2012, they will apply retrospectively from 1 January 2012.
- (q) The 5% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works. The 10% rate applies to royalties paid for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulas or processes, computer software, industrial, commercial or scientific equipment or information concerning industrial, commercial or scientific experience.
- (r) The 10% rate applies to interest paid with respect to a loan or other debt claim for a period exceeding two years or interest paid to a financial institution.
- (s) Ireland has signed a new double tax treaty with Germany, which will replace the existing treaty between the countries, but the new treaty is not yet in force.

Ireland has entered into limited double tax agreements with the Isle of Man and Jersey, which do not provide for reductions in withholding taxes.

Ireland is negotiating double tax treaties with Argentina, Azerbaijan, Egypt, Thailand, Tunisia, Ukraine and Uzbekistan. Existing treaties with Belgium, Cyprus, France, Italy, Korea (South), Pakistan and Switzerland are in the process of renegotiation. Protocols to the existing agreements with Austria, Malaysia and South Africa are awaiting ratification.

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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)
Withholding Tax (%)	
Dividends	0
Interest	0 (b)
Royalties	0
Net Operating Losses	
Carryback	1 (c)
Carryforward	Unlimited (c)

- (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 and certain banking business in the Isle of Man, which are 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, or the EU resident can opt for exchange of information with the home country. Effective from 1 July 2011, the withholding tax option will be withdrawn and information will be exchanged automatically in all cases.
- (c) Loss relief is available in certain circumstances (see Section C).

## 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*). A nonresident 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.** 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 and certain banking business in the

Isle of Man, which are subject to a standard rate of 10%. Trading companies may also elect to be taxed at the 10% rate.

**Attribution Regime for Individuals.** The Attribution Regime for Individuals (ARI) applies only to Isle of Man resident members of “relevant” Manx companies. It does not apply to companies that do not have any Isle of Man resident members, companies quoted on a recognized stock exchange, companies limited by guarantee and certain other entities. A “relevant company” is an investment company or trading company that has not distributed 55% of its distributable profits. Under the ARI, the amount that is attributed to the member is the amount of profit that the member would have been entitled to receive if the company had distributed all its profits. In general, this amount equals 100% of the member’s share of the company’s taxable profits. To qualify as a trading company, at least 50% of the income of the company must be derived from its trade. If the 50% threshold is not met, the relevant company is treated as an investment company. For investment companies, attribution occurs with respect to Manx-resident members in all cases.

Dividends subsequently paid out of profits that have been subject to the ARI are tax free.

The ARI will be repealed, effective from 5 April 2012.

**Special types of companies.** Special types of companies in the Isle of Man are described briefly below.

*Funds industry.* The Isle of Man has a full suite of fund options, with the Specialist Fund being a popular vehicle for alternative investment. Management fees, including administration services’ fees, of Special Investment Funds are exempt for value-added tax (VAT) purposes. Special Investment Funds can include closed-ended investment trust companies. The exemption also covers U.K. listed investment entities, including investment trust companies, venture capital trusts, and certain overseas funds.

The Isle of Man also offers exempt schemes which are not subject to regulation. Exempt schemes may have up to 49 members (provided the scheme is not available to the public; that is, it is a private engagement). Virtually all types of assets can be held in these schemes.

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 New Manx Vehicle (NMV) is a corporate vehicle that is subject to simplified filing requirements and that is designed to be flexible and inexpensive to administer. It is taxed in the same manner as normal Isle of Man companies.

*Manx foundations.* Under the Foundations Act 2011, foundations can be created in the Isle of Man, effective from 1 January 2012. Manx foundations are regarded as corporate taxpayers for purposes of Manx corporate income tax and are taxed in the same manner as normal Isle of Man companies. Manx foundations are of particular interest to persons who are from civil law jurisdictions.

**Capital gains.** The Isle of Man does not impose a capital gains tax.

**Administration.** Tax returns must be filed within 12 months and 1 day after 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.

Filing penalties apply for the late submission of company returns. The first penalty is £250. A further penalty of £500 is imposed if the return is not filed within 18 months and 1 day after the end of the accounting period. If the return remains outstanding 24 months after the end of the accounting period, criminal proceedings may be begun against the company and its officers.

**Withholding taxes.** In general, no withholding tax is imposed on dividends, interest and royalties paid by Isle of Man resident companies. The Assessor of Income Tax may require a person who makes a payment or credit of taxable income to a person resident outside the Isle of Man to deduct income tax from such payment or credit at a rate specified by the Assessor. For example, a 10% withholding tax is imposed on Isle of Man rent paid by Isle of Man resident companies to nonresident companies, and a 20% withholding tax is imposed on rent paid to nonresident individuals. 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 exchange of information with his or her home jurisdiction. Effective from 1 July 2011, the withholding tax option will be withdrawn and information will be exchanged automatically in all cases.

**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. Dividends are not 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.

Under the loss relief rules described above, relief is allowable only against profits chargeable at the same rate of tax. Losses arising from activities subject to tax at the rate of 0% may not be relieved against profits taxed at 10%.

#### **D. Other significant taxes**

The Isle of Man and the United Kingdom are considered one area for VAT, customs and excise purposes. VAT, customs and excise rates are 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 taxable at a corporate income tax rate of 0%, but are 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 its own Electronic Processing Unit (EPU), whereby international traders or their agents can electronically declare imports or exports into or out of the Isle of Man or the United Kingdom. This results in a system-generated customs clearance. On payment of duties and taxes due, goods can then enter into free circulation and can be traded with any other EU member state. Businesses can land their goods in the Isle of Man or the United Kingdom and

make customs declarations through the Isle of Man for both jurisdictions. Systems and procedures in both the Isle of Man and the United Kingdom are the same and rules, procedures and decisions from the Isle of Man apply throughout the EU.

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 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.

**Foreign-exchange controls.** The Isle of Man does not impose any foreign-exchange controls.

### F. Tax treaties

The Isle of Man has entered into double tax treaties with Estonia, Malta and the United Kingdom. It has also signed double tax treaties with Bahrain and Belgium, but these treaties are not yet in force. The Isle of Man has also entered into agreements with Australia, New Zealand and Slovenia, which allocate the taxing rights of certain income of individuals.

In addition, the Isle of Man has entered into agreements with the following countries to eliminate the double taxation of profits with respect to enterprises operating ships or aircraft in international traffic.

Denmark (a)	Germany	Norway (a)
Faroe Islands (a)	Greenland (a)	Poland (a)
Finland (a)	Iceland (a)	Sweden (a)
France (b)	Netherlands	United States

(a) These countries have also signed agreements with the Isle of Man to eliminate the avoidance of double taxation on individuals.

(b) The agreement is awaiting ratification.

The Isle of Man has signed tax information exchange agreements (TIEAs) with the following countries.

Australia	Greenland	New Zealand
Canada	Iceland	Norway
China	India	Poland
Czech Republic*	Indonesia*	Portugal*
Denmark	Ireland	Slovenia
Faroe Islands	Japan	Sweden
Finland	Mexico*	United Kingdom
France	Netherlands	United States
Germany		

\* TIEAs with these countries are awaiting ratification.

The Isle of Man has also entered into various shipping and aircraft agreements with most of the countries listed above.

The Isle of Man has signed several tax agreements with the Netherlands, including an agreement providing for a mutual understanding on the application of the participation exemption with the Netherlands. This agreement provides that an Isle of Man company subject to the 0% tax rate qualifies for the Dutch participation exemption if certain other conditions are satisfied.

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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	0/15/25/30 (c)(d)(e)
Interest	15/25 (a)(c)(d)(f) (g)(h)
Royalties from Patents, Know-how, etc.	25 (a)(c)(d)(f)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) This is the regular company tax rate for profits and real capital gains for 2012. Reduced rates of company tax are available in accordance with the Capital Investment Encouragement Law (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.
- (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).

**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.
- Its business is controlled and managed in Israel.

**Rates of corporate tax.** The regular rate of company tax is 25% for 2012. For 2012, the following are the combined Israel taxes on profits for 2012, taking into account the 30% withholding tax on dividends paid to shareholders holding 10% or more of the company (material shareholders) and the 25% withholding tax imposed on shareholders holding less than 10% of the company:

- Material shareholders: 47.5%
- Other shareholders: 43.75%

The dividend withholding tax rates mentioned above may be reduced based on applicable tax treaties.

**Tax levy on oil and gas.** Under the Windfall Profits Tax Law, effective from 10 April 2011, a levy is imposed on oil and gas profits from an oil or gas project in the relevant tax year. The levy is designed to capitalize on the economic dividend arising from each individual reservoir. The levy is imposed only after the investments in exploration, development and construction are fully returned plus a yield that reflects, among other items, the developer's risks and required financial expenses. The levy is progressive and has a relatively lower rate when first collected, and increases as the project's profit margins grow.

**Tax reductions and exemptions.** The major tax reductions and exemptions offered by Israel are described below.

*Capital Investment Encouragement Law.* An amendment to the Capital Investment Encouragement Law is effective from 1 January 2011. Significant aspects of the amended law are summarized below.

The law has the following objectives:

- Achieving of enhanced growth targets in the business sector
- Improving the competitiveness of Israeli industries in international markets
- Creating employment and development opportunities in outlying areas

Precedence is granted to innovation and development areas.

The country is divided into national priority areas, which benefit from several reduced tax rates and benefits based on the location of the enterprise.

A reduced uniform corporate tax rate for exporting industrial enterprises (over 25% of turnover from export activity) is established. The reduced tax rate does not depend on a program and applies to the industrial enterprise's entire income.

The tax rates for industrial enterprises will be reduced gradually over a period of five years according to the following schedule:

- For 2011 and 2012, the reduced tax rate is 10% for Development Area A and 15% for the rest of the country.
- For 2013 and 2014, the reduced tax rate will be 7% for Development Area A and 12.5% for the rest of the country.

- For 2015 and future years, the reduced tax rate is 6% for Development Area A and 12% for the rest of the country.

The reduced tax rate is contingent on making a qualifying investment in productive assets.

A reduced tax on dividends of 15% is imposed without distinction between foreign and local investors. On the distribution of a dividend to an Israeli company, no withholding tax is imposed.

A unique tax benefit is granted to certain large industrial enterprises. This entitles such companies to a reduced tax rate of 5% in Development Area A and 8% in the rest of the country.

Fixed asset grants of 20% to 32% of the investment cost of fixed assets may be granted to enterprises in Development Area A.

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 company enjoying the benefits of the Capital Investment Encouragement Law.

*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 50% 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
- 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
- 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*).

### **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:

- For 2012, the tax rate on real capital gains is 25%.
- The inflationary component of capital gains 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.

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. 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
- Shares in a research-intensive company that were issued to the foreign resident investor by the company on or after 1 January 2003

Foreign residents may also qualify for an exemption from capital gains tax on disposals of all types of Israeli securities that were purchased on or after 1 January 2009 if the seller (the company or individual who sold the Israeli securities to the foreign resident) was not a related party.

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.
- 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
- 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
- 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 30% withholding tax is generally imposed on dividends paid to individual shareholders holding 10% or more of the shares in an Israeli company (material shareholders). A 25% withholding tax is imposed on dividends paid to individual shareholders holding less than 10% of the shares in an Israeli company. 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).

A reduced withholding tax of 15% is imposed on dividends paid out of the income of a company enjoying the benefits of the Capital Investment Encouragement Law.

**Interest.** An exemption from Israeli tax is available to foreign investors that receive interest income on bonds issued by companies traded on the Israeli stock exchange.

**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.
- 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.

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
- 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 25% tax is imposed 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
- 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 certain instances. For example, under the Inflationary Adjustments Regulations (Accelerated Depreciation), for assets first used in Israel between 1 June 1989 and 31 December 2013, industrial enterprises may depreciate equipment using the straight-line method at annual rates ranging from 20% to 40%. Alternatively, they may depreciate equipment using the declining-balance method at rates ranging from 30% to 50%.

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
Solar energy-producing plant	25

**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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT), standard rate	16
Wage and profit tax, imposed on financial institutions instead of VAT; this tax is imposed in addition to company tax	16
National insurance contributions on monthly employment income (subject to an upper income limit which fluctuates periodically)	
Employer payments; rates depend on residency of employee	Various
Employee payments; rates depend on residency of employee	Various
Payroll levy on salaries of foreign employees; levy does not apply if monthly salary exceeds twice the average monthly salary	20
Acquisition tax, imposed on purchasers of real estate rights; maximum rate	5 to 7
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. In certain circumstances, shekel-foreign currency swap transactions and foreign residents' transactions in short-term government bonds are also subject to reporting requirements. The 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. An Israeli taxpayer must report on each international transaction undertaken with a related party and indicate the arm's length amount for such transaction. 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.
- 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.
  - 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
- 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.

*Reportable transactions.* Certain types of transactions with foreign companies must be reported to the tax authorities.

**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. A 30% withholding tax rate applies to dividends paid to recipients holding 10% or more 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)
Canada	15	15	15
China	10	7/10 (e)	7/10 (f)
Croatia	5/10/15 (h)	0/5/10 (c)(ll)	5
Czech Republic	5/15 (g)	10	5
Denmark	10 (oo)	0/5 (q)(mm)	0
Estonia	0/5 (oo)	5 (c)	0
Ethiopia	5/10/15 (h)	0/5/10 (c)(ll)	5
Finland	5/10/15 (h)	10 (i)	10
France	5/10/15 (h)	5/10 (i)(j)	10
Georgia	0/5 (oo)	0/5 (q)(mm)	0
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 (South)	5/10/15 (h)	7.5/10 (c)	2/5 (o)
Latvia	5/10/15 (h)	5/10 (c)	5
Lithuania	5/10/15 (h)	0/10 (q)(ll)	5/10 (u)
Luxembourg	5/10/15 (h)	5/10 (c)	5
Mexico	5/10 (p)	10 (q)	10
Moldova	5/10 (kk)	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)
Portugal	5/10/15 (h)	10 (q)	10
Romania	15	5/10 (v)	10
Russian Federation	10	10 (q)	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties (a)</b>
	%	%	%
Singapore	5/10 (g)	7 (c)	5 (x)
Slovak Republic	5/10 (g)	2/5/10 (y)	5
Slovenia	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
Taiwan	10	7/10 (c)	10
Thailand	10/15 (bb)	10/15 (cc)	5/15 (dd)
Turkey	10	10 (ee)	10
Ukraine	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)
Vietnam	0	10 (q)	5/7.5/15 (u)
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), 7% (Taiwan) or 7.5% (Korea) applies to interest on loans from banks or financial institutions. The 10% rate (Brazil, 15%; Estonia, 5%; 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, 26%) 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, Portugal 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 26%) 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. The 7.5% rate (Vietnam) applies to technical fees.
- (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 26%) 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) 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.
- (ll) 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.
- (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 (Denmark, Georgia and Moldova) or acts on behalf of the other contracting state (Slovenia), and with respect to interest paid on traded corporate bonds (Denmark and Georgia). The 5% rate applies to other interest.
- (nn) See Sections A and B. A 20% withholding tax rate applies to dividends and other payments to recipients who hold under 10% of the payer entity.
- (oo) The 0% rate applies if the recipient is a company that holds directly at least 10% of the capital of the payer.

Israel has signed tax treaties with Malta and Panama, but these treaties have not yet been ratified. Israel is currently renegotiating its tax treaties with Germany and the United Kingdom.

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**A. At a glance**

Corporate Income Tax Rate (%)	27.5 (a)
Capital Gains Tax Rate (%)	0/1.375/27.5 (b)
Branch Tax Rate (%)	27.5 (a)
Withholding Tax (%)	
Dividends	0/1.375/20 (c)(d)
Interest	0/12.5/20 (e)(f)
Royalties from Patents, Know-how, etc.	0/22.5/30 (f)(g)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (h)

(a) The corporate income tax (*imposta sul reddito delle società*, or IRES) rate is 27.5%. A 6.5% surcharge (increasing the effective tax rate to 34%) is imposed on oil, gas and energy companies with revenues exceeding €10 million and taxable income exceeding €1 million, with reference to the preceding year. For 2011 to 2013, the 6.5% surcharge is increased to 10.5%, increasing the total tax rate to 38%. 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 20% rate applies to dividends paid to resident individuals with nonsubstantial participations (for information on substantial and nonsubstantial participations, see the discussion of capital gains taxation in Section B). The 20% 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 1/4 of the withholding tax paid. Tax treaties may provide for a lower tax rate. Effective from 1 January 2008, a 1.375% rate applies under certain circumstances (see Section B). If either the treaty or the 1.375% rate applies, the 1/4 tax refund cannot be claimed.

(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 10% (this percentage took effect in 2009) or more of the shares of the subsidiary for at least one year. 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, nonbank current accounts and certain cash pooling arrangements. The term “listed” refers to a listing on the Italian exchange, or on an official exchange of an EU or European Economic Area (EEA) country. Such exchanges are also included in the Italian white list. The 20% rate applies to interest derived by residents and nonresidents from corporate bonds and similar instruments and from loans, in general. The 20% rate also applies as a final tax to interest paid to residents on bank accounts and deposit certificates. The rate applicable to interest paid on treasury bonds issued by the Italian government and by white-list countries is reduced to 12.5%. For resident individuals carrying on business activities in Italy and resident companies, interest withholding taxes are advance payments of tax. In all other cases, the withholding taxes are final taxes. Under the 2008 Budget Law, the black list (see Section B) and the above-mentioned white list will be replaced by a new white list (the primary criterion for inclusion on the new white list will be the effective exchange of information with the Italian tax authorities).
- (f) 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 for corporate income tax purposes only. Losses incurred in the first three tax years of an activity may be carried forward indefinitely. Losses incurred in the following years can be carried forward indefinitely and deducted up to a maximum amount of 80% of taxable income. 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 (like a “place of effective management” concept)
- 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.
- 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.** The IRES rate is 27.5%. A 6.5% surcharge (increasing the effective tax rate to 34%) is imposed on oil, gas and energy companies with revenues exceeding €10 million and taxable income exceeding €1 million, with reference to the previous year. For 2011 to 2013, the 6.5% surcharge is increased to 10.5%, increasing the total tax rate to 38%.

**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. Effective from 1 January 2008, for manufacturing companies,

IRAP is imposed at a rate of 3.9% on the net value of production, which is calculated by subtracting the cost of production from the value of production. A 4.2% rate applies to corporations and entities granted concession rights (other than those running highways and tunnels). The rate is increased to 4.65% for banks and other financial entities. A rate of 5.9% applies to insurance companies. In many regions, these two latter rates are increased by 0.92 percentage point. An 8.5% rate applies to public entities performing commercial activities.

Special rules for the calculation of the tax base for IRAP purposes apply to banking institutions, insurance companies, public entities and noncommercial entities.

Each region may increase or decrease the rate of IRAP by a maximum of 0.9176 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. Effective from the 2008 fiscal year, the annual IRAP return is 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 the following:

- Certain extraordinary costs.
- Credit losses.
- Labor costs (excluding certain compulsory social contributions).
- Interest expenses. However, banks, insurance companies and financial holding companies can deduct only 96% of interest expenses from the IRAP tax base.

### **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 (PE) in Italy are subject to IRES and IRAP. Gains derived from sales of participations and extraordinary capital gains derived from transfers of going concerns are excluded from the tax base for IRAP purposes.

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 a 95% participation exemption regime (that is, only 5% is taxable) for capital gains derived in fiscal years beginning on or after 1 January 2008 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 12 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 to be contained in a ministerial decree (at the time of writing, this decree had not yet been issued). The primary criterion for inclusion on the white list will be 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.

Notwithstanding the 95% exemption above, the 84% exemption under prior law 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 sales 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.

If the conditions described above are not satisfied, capital gains on the sale 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, a capital loss derived from the sale of such shareholdings may be deducted.

In principle, capital losses on shares are deductible. However, capital losses on participations that would benefit from the 95% participation exemption are 100% nondeductible. 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.* Most tax treaties prevent Italy from levying taxation on nonresidents deriving capital gains from the sale of Italian participations.

If no treaty protection is available, capital gains derived from sales of a substantial participation in Italian companies and partnerships are subject to tax in Italy, but 50.28% of such gains is exempt. As a result, 49.72% of the gain is taxable at the corporate income tax rate of 27.5%, and the effective tax rate is 13.67%. 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 20%. However, certain exemptions to the 20% rate may apply under domestic law, such as for the following:

- A nonresident (including a person from a tax haven) selling listed shares
- Nonresident shareholders resident in white-list jurisdictions

**Administration.** Income tax returns must be filed by the end of the 9th 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
- Transfers of tax credits and excess taxes
- Tax-haven transactions
- International group companies
- Tax restrictions on nonoperating companies (see Section C)

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% excluded 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 this regime:

- Dividends received from subsidiaries located in a foreign country 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.

- Italian parent companies are taxed on 100% of the dividends received from a direct subsidiary established in a country not included in the white list.

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.

A 20% withholding tax is imposed on dividends paid from Italian companies to nonresident companies without a PE 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 1/4 of the withholding tax paid. Dividends paid by Italian entities (out of profits accrued in the fiscal year following the one in progress on 31 December 2007 and in subsequent fiscal years) to entities established in an EU member state or in an EEA country included in the white list are subject to a reduced withholding tax rate of 1.375%. If the 1.375% rate applies, the 1/4 tax refund cannot be claimed.

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 10% (this percentage is effective from 1 January 2009) 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.

For nonresident companies with PEs 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 20% withholding tax is imposed on loan interest paid to nonresidents. Lower rates may apply under double tax treaties.

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 the voting rights of the first company.
- A third company has a direct minimum holding of 25% of the 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.
- The recipient must be the beneficial owner of the payment.

Domestic withholding taxes on interest and royalties may be reduced or eliminated under tax treaties.

An exemption also applies to interest derived by nonresidents on the white list (see *Capital gains*) from treasury bonds, bonds issued by banks and "listed" companies, nonbank current accounts and certain cash pooling arrangements. The term "listed" refers to a listing on the Italian exchange, or on an official exchange of an EU or EEA country. Such exchanges are also included in the Italian white list.

**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 carried 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 and consultants 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.
- 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.

**Limitations on interest deductions.** Effective from 1 January 2008, both the pro rata rule and the thin-capitalization rule were repealed. Consequently, for companies other than banks and other financial entities, the deductibility of interest expenses is determined only in accordance with 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, net interest expenses (that is, interest expenses exceeding interest income) are deductible only up to 30% of the EBITDA. Interest expenses exceeding 30% of the EBITDA can be carried forward with no time limit. Effective from 2010, spare EBITDA capacity is available for carryforward. For tax consolidations, excess interest expenses of a group company may be offset with spare EBITDA capacity of another group company. For this purpose only, the EBITDA capacity of foreign subsidiaries can also be taken into account. Spare EBITDA capacity arises if the net interest expenses are less than 30% of the EBITDA.

Banks and other financial entities can deduct only 96% of interest expenses for both IRES and IRAP purposes.

**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 PEs of nonresident companies are deemed to be “nonoperating companies” if the total of their average nonextraordinary 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
- 15% of the book value of the company's other long-term assets

The following companies are also deemed to be "nonoperating companies:"

- Companies that incurred losses for three consecutive fiscal years
- Companies that incurred losses for two consecutive fiscal years and in the third fiscal year generated income in an amount lower than the minimum resulting from the application of the percentages described in the next paragraph

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
- 12% of the book value of the company's other assets for the year

Nonoperating companies that are in a value-added tax (VAT) credit position may no longer take the following actions:

- They may not claim such VAT for a refund.
- They may not use the VAT to offset other tax payments due.
- They may not surrender the VAT to other group companies.
- They may not carry forward the VAT.

Nonoperating companies may not generate tax losses. Previous tax losses (that is, those incurred when the company was operating) cannot be offset against the minimum income. In the (unlikely) event that the taxable income exceeds the minimum, only 80% of the amount exceeding the minimum can be offset.

The income of nonoperating companies is subject to corporate income at a rate of 38% (rather than the ordinary 27.5% rate). IRAP (see Section B) also applies.

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 provided additional exclusions, such as companies with 50 or more shareholders, companies with an amount of business income greater than the total asset value and companies that become insolvent or enter into any type of insolvency procedure.

**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 18 years the write-down of receivables exceeding 0.3% of total loan receivables. An immediate deduction is allowed for receivables up to the amount of the threshold.

*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 manufacturing. 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%.

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 with no time limit (however, the old five-year limit might apply for pre-2011 losses) and deducted from income of the following periods for a total amount equal to 80% of the taxable income (or the lower value if the tax-loss amount does not reach 80% of the amount of taxable income for the fiscal year). 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 also be carried forward for an unlimited number of tax periods, but the limit of 80% of taxable income does not apply. 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*).

**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. Tax consolidation also allows net interest expenses (exceeding 30% of a company's EBITDA) to be offset with spare EBITDA capacity of another group company. For this purpose only, spare EBITDA capacity of certain foreign subsidiaries can also be used.

*Consortium relief.* Italian corporations can elect consortium relief if each shareholder holds more than 10% but less than 50% of the voting rights in the contemplated Italian transparent company. 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 (in all other circumstances this would mean an effective tax rate of 1.375%).

The election does not change the tax treatment of dividends distributed out of reserves containing profits accrued before the exercise of the election.

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 following table summarizes other significant taxes.

Nature of tax	Rate
Value-added tax, on goods, services and imports	
Standard rate	21%
Other rates	4%/10%
Municipal real property tax (ICI), imposed on property's cadastral value	0.4% to 0.7%
Municipal real property tax (IMU); imposed on Italian property's re-evaluated cadastral value; rates may be modified by municipal authorities	
Ordinary rate	0.76%
Principal home rate	0.4%
Social security contributions (2012 rates); includes mandatory social contribution, Pension Fund contribution and Health Assistance Fund contribution; rates depend on the employer's sector of economic activity	
Industrial sector	
Mandatory social contributions; payable by employers with more than 50 employees; includes pension (IVS) and other minor contributions; payable on gross remuneration	
Employers	
Workers	41.57%
Office staff	39.35%
Executives	36.45%

Nature of tax	Rate
Employees	
Executives	9.19%
Workers and office staff	9.49%
(For employees who have no social security record before 1 January 1996, the above pension contributions payable by employers and employees are calculated on gross remuneration capped at €96,149.)	
Additional contribution payable to the Pension Fund for Industrial Executives (PREVINDAI); based on gross remuneration capped at €150,000	
Employers	4%
Employees	4%
Additional contribution payable for industrial executives to the Health Assistance Fund (FASI)	
Employers	quarterly €435 + 294/ annual €1,740 + 1,176
Employees	quarterly €220/ annual €880
Tertiary and commerce sector (trade, services and activities complementary and auxiliary to industrial production and the agricultural sector)	
Mandatory social contributions; includes pension and other minor contributions; payable on gross remuneration by employers with more than 200 employees	
Employers	
Workers	39.37%
Office staff	39.37%
Executives	36.03%
Employees	
Executives	9.19%
Workers and office staff	9.49%
(For employees who have no social security record before 1 January 1996, the above pension contributions payable by employers and employees are calculated on gross remuneration capped at €96,149.)	
Additional pension and health assistance contributions; payable by employees Pension fund (FON. TE.); payable on remuneration base for the severance payment fund (TFR)	0.55%
Health fund	
Employers	€120 per year
Employees	€24 per year
Mandatory insurance premium for injuries or professional diseases; payable by employers; the rate depends on the professional risk related to the employment activity performed by the individual (income cap of approximately €27,264.90 applies to executives)	Various

## 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. In principle, Italian transfer-pricing rules do not apply to domestic transactions. However, under case law, grossly inadequate prices in these transactions can be adjusted on abuse-of-law grounds (for example, transactions between a taxpaying company and another company with net operating losses on the verge of expiring).

No penalty applies as a result of transfer-pricing adjustments if Italian companies complied with Italian transfer-pricing documentation requirements, allowing verification of the consistency of the transfer prices set by the multinational enterprises with the arm's length principle. Such documentation consists of the documents called the following:

- Masterfile
- Country Specific Documentation

The Masterfile collects information regarding the multinational group and it must be organized in the following chapters.

<b>Chapter</b>	<b>Information in chapter</b>
1	A general description of the multinational group
2	Multinational group structure (organizational and operational)
3	Business strategies pursued by the multinational group
4	Transaction flows
5	Intragroup transactions
6	Functions performed, assets used and risks assumed
7	Intangible assets
8	Transfer-pricing policy of the multinational group
9	Relationships with the tax administrations of the EU member states regarding Advance Pricing Arrangements (APAs) and transfer-pricing rulings

The submission of more than one Masterfile is allowed if the multinational group carries out several industrial and commercial activities that are different from each other and regulated by specific transfer-pricing policies.

The Country Specific Documentation contains information regarding the enterprise and it must be organized in the following chapters and annexes.

Chapter	Information in chapter or annex
1	General description of the enterprise
2	Business sectors
3	Enterprise's organization chart
4	General business strategies pursued by the enterprise and potential changes compared to the previous tax years
5	Controlled transactions
6	Intragroup transactions
Annex 1	Flowchart describing the transaction flows, including those falling outside the scope of the ordinary management activities
Annex 2	Copies of written contracts on the basis of which the transactions referred to in Chapters 5 and 6 are regulated

**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)
- 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.

Under Article 167 (8-bis) of the Income Tax Code (introduced by Law Decree 78 of 1 July 2009), the CFC rules also apply to foreign companies that are not established in black-list jurisdictions if both the following conditions are met:

- They are subject to an effective tax rate lower than half the rate that they would have been subject to in Italy.
- More than 50% of their income is passive income, which is dividend, interest, royalty and group services income.

The rules discussed in the preceding paragraph do not apply if the Italian resident company proves that the foreign company is not a wholly artificial arrangement for the purpose of obtaining a tax advantage; a mandatory Italian ruling must be requested for this purpose.

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

- 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

Under the 2008 Budget Law, the black list mentioned above will be replaced by a new white list that will be contained in a ministerial decree. The primary criteria for inclusion on the new white list will be following:

- The effective exchange of information with the Italian tax authorities
- An effective tax rate not substantially lower than the Italian rate

**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:
  - Transformations, mergers, divisions, liquidations and distributions of capital reserves.
  - Contributions to companies or transfers or use of going concerns.
  - Assignments of credits.
  - Assignments of excess tax credits.
  - 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.
  - 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.
  - Penalty clauses, fines and advance payments in contracts with tax-haven entities.
- 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 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.

*Case law.* In 2008 the Italian Supreme Court issued several important decisions in which it held that the “abuse of law” principle is not limited to income taxes and to the transactions under Article 37-bis, but also applies to all taxes and all transactions without a business purpose (that is, with a nontax purpose). Some of these decisions held that the “abuse of law” principle derives from EU legislation, while more recent decisions held that the “abuse of law” principle directly derives from the Constitution. It is uncertain whether the burden of proof in “abuse of law” cases is on the taxpayer or on the tax authorities. In certain cases, the Supreme Court held that the burden of proof is on the tax authorities, while in different circumstances in other cases, it held that the burden of proof was on the taxpayer.

**Debt-to-equity rules.** For information regarding restrictions on the deductibility of interest, see Section C.

**Mergers and acquisitions.** The 2008 Budget Law introduced a significant change to the rules for the fiscal treatment of values resulting from merger and acquisition 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 a step-up tax at rates ranging from 12% to 16%. 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 step-up 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)
Armenia	5/10 (a)	0/10 (b)(d)	7
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
Belarus	5/15	0/8 (d)(e)(z)	6
Belgium	15	0/15 (w)	5
Brazil	15	0/15 (d)	15/25 (k)
Bulgaria	10	0	5
Canada	15	0/15 (d)(e)(z)	0/10 (l)
China	10	0/10 (d)(tt)	10
Côte d'Ivoire	15	0/15 (d)	10
Croatia	15	0/10 (b)(d)	5
Cyprus	15 (vv)	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 (cc)	0/25 (d)(e)(z)	15
Estonia	5/15 (a)	0/10 (d)(uu)	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)	0/10/15 (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
Iceland	5/15 (a)	0	5
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
Jordan	10	0/10 (d)(e)	10
Kazakhstan	5/15 (a)	0/10 (d)(e)(z)	0/10 (hh)
Korea (South)	10/15 (a)	0/10 (d)(e)(uu)	10
Kuwait	5/20 (a)	0	10

	<b>Dividends (1)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Latvia	5/15 (a)	10 (d)	5/10 (kk)
Lithuania	5/15 (a)	0/10 (d)(e)(z)	5/10 (kk)
Luxembourg	15	0/10 (d)(e)(z)	10
Macedonia	5/15 (a)	0/10 (d)(e)(z)	0
Malaysia	10 (ww)	0/15 (d)	15
Malta	15	0/10 (d)(e)(z)	0/10 (m)
Mauritius	5/15 (a)	0/20 (dd)	15
Mexico	15	0/15 (d)(e)(z)	0/15 (l)
Moldova	5/15	5	5
Morocco	10/15 (a)	0/10 (d)(e)(z)	5/10 (o)
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)	0/20 (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
Qatar	5/15	0/5 (d)(e)(z)	5
Romania	10	0/10 (d)(e)(z)	10
Russian Federation	5/10 (g)	10	0
Saudi Arabia	5/10	0/5 (d)(e)(z)	10
Senegal	15	0/15 (ll)	15
Singapore	10	0/12.5 (d)(z)	15/20 (n)
Slovenia	5/15	0/10 (d)(e)(z)	5
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)	0/10 (z)	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	0/20 (ii)	—
United Arab Emirates	5/15 (a)	0	10
United Kingdom	5/15 (a)(gg)	0/10 (e)(ee)	8
United States	5/15 (cc)	0/10 (aa)	0/5/8 (s)
Uzbekistan	10	0/5 (ll)	5
Venezuela	10	0/10 (b)(z)	7/10 (p)
Vietnam	5/10/15 (f)	0/10 (d)(e)(z)	7.5/10 (jj)
Yugoslavia (v)	10	10	10
Zambia	5/15 (a)	0/10 (d)	10
Nontreaty countries	20 (ss)	20 (ss)	22.5/30 (ss)

- (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 10% in the distributing company for an uninterrupted period of at least one year. Otherwise, a 1.375% dividend withholding tax rate applies under domestic law to dividends paid to EU and EEA subject-to-tax companies.
- (a) The lower rate applies to corporate shareholders satisfying the following qualifying tests:
- Armenia: at least 10% of the capital (equal to at least US\$100,000 or the equivalent value in other currency) for 12 months
  - 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
  - Iceland: beneficial owner is a company (other than a partnership) owning at least 10% of the capital for at least 12 months
  - Japan: at least 25% of the shares with voting rights for six months
  - Kuwait: at least 75% of the capital
  - Latvia: beneficial owner is a company (other than a partnership) owning at least 10% 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
  - 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 25% of the voting rights of the shares for the 12-month period ending on the date of declaration of the dividend. The 10% rate applies to the gross amount of the dividends if the beneficial owner is a company that is not entitled to the application of the 5% rate and that has held at least 10% of the voting shares of the company paying the dividends for the 12-month period preceding the date of declaration of the dividends. 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 25% 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 tax rate 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) The 0% rate applies to royalties for copyrights of literary, artistic or scientific works (excluding royalties for computer software, motion pictures, films, tapes or other means of reproduction used for radio or television broadcasting). The 5% rate applies to royalties for the use of, or the right to use, computer software or industrial, commercial, or scientific equipment. In all other cases, the 8% rate is imposed on the gross amount of the royalties.
- (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 Slovenia and the Federal Republic of Yugoslavia. Italy has entered into new tax treaties with Croatia and 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
  - 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) Interest withholding tax is not imposed if any of the following circumstances exist:
- The interest is beneficially owned by a resident of the other contracting state that is a qualified governmental entity and that holds, directly or indirectly, less than 25% of the capital of the person paying the interest.
  - The interest is paid with respect to debt obligations guaranteed or insured by a qualified governmental entity of that contracting state or the other contracting state and is beneficially owned by a resident of the other contracting state.
  - The interest is paid or accrued with respect to a sale on credit of goods, merchandise, or services provided by one enterprise to another enterprise.
  - The interest is paid or accrued in connection with the sale on credit of industrial, commercial, or scientific equipment.
- (bb) The lower rate applies to royalties for literature, musical and artistic works.
- (cc) The 20% 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
  - Credit sales of goods delivered from one enterprise to another enterprise
- (ff) The 15% rate, which is contained in the dividend article, 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 PE 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
  - Interest on current accounts and deposits with banks or other credit institutions
- The 20% rate is the withholding tax rate 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
  - 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
  - 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
  - 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
  - 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 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.

- (vv) 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.
- (ww) 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.

## Jamaica

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### A. At a glance

Corporate Income Tax Rate (%)	33½ (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	33½ (a)
Withholding Tax (%)	
Dividends	0/33½ (b)
Interest	33½ (c)
Royalties	33½ (d)
Management Fees	33½ (d)
Branch Remittance Tax	33½
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (e)

- (a) 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.
- (b) The dividend withholding tax is a tax imposed on payments to nonresidents (the rate may be reduced by double tax treaties). Withholding tax is not imposed on dividends paid by a Jamaican resident company to a Jamaican resident shareholder.
- (c) 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.
- (d) This is a final tax imposed on payments to both residents and nonresidents. The withholding tax rate may be reduced under tax treaties.
- (e) 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 33½%. 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 33½%.

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 relieved from tax on income derived from the manufacturing and international trading of products. This relief 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 4% 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 20% per year is levied on late income (corporation) tax payments, and a penalty of 50% per year may also be imposed.

**Dividends.** In general, dividends paid to nonresidents are subject to a final withholding tax and the tax withheld must be paid to the tax authorities in Jamaica. In general, withholding tax is not imposed on dividends paid by Jamaican resident companies to Jamaican resident shareholders. Preference dividends that are deductible for income tax purposes are fully taxable in the hands of the shareholder, regardless of whether the shareholder is resident or nonresident. However, preference dividends that do not qualify for an income tax deduction are treated similarly to ordinary dividends and are not subject to income tax if they are

received by Jamaican residents from other Jamaican residents. Dividends paid out of capital are not subject to income tax, but they are subject to a 4% 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 33½% 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.

**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*.

*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 11.25% calculated using the straight-line method. A 12.5% annual allowance calculated using 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 calculated using the straight-line method is granted for computers. Office equipment qualifies for an annual allowance of 11.25% calculated using the straight-line method. Commercial and industrial buildings generally qualify for annual allowances calculated using 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.

*Special capital allowance.* A special capital allowance is granted for capital expenditure incurred by qualifying enterprises on new machinery. One hundred percent of the capital expenditure is deducted in the tax year in which the expenditure is incurred (a one-time write off). 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 may generally 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 following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate</b>
Customs User Fee; imposed on the value of all imports with a few exceptions	2%
Customs User Fee on certain petroleum products	5%

Nature of tax	Rate
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	17.5%
Telephone services, cards and instruments	25%
Tourism sector	10%
Electricity for residential premises with usage above 200 kilowatt-hours (kwh) and for commercial and industrial premises	10%
Certain commercial imports	17.5%
	(advance rate of 5%)
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	4%
Transfer tax on death for estates	1.5%
Stamp duty	Various
Social security contributions	
National insurance scheme; imposed on annual earnings (income for self-employed individuals) up to J\$1 million; 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

33⅓%. Withholding tax at a rate of 33⅓% is generally imposed on dividends remitted, unless a treaty provides a different rate.

**Antiavoidance legislation.** Several antiavoidance measures are in force. These measures generally apply to transactions between related parties that were not made at arm's length.

## F. Treaty withholding tax rates

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

	Dividends	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	33⅓
Grenada (h)	0	15	15	15
Guyana (h)	0	15	15	15
Israel	15/22.5 (e)	15	10	33⅓
Montserrat (h)	0	15	15	15
Norway	15	12.5	10	10
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
Spain	5/10 (b)	10	10	10
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	33⅓	33⅓	33⅓	33⅓

- (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.

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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 (%) (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	9

- (a) Local income taxes (see Section D) are also imposed. The resulting effective corporate income tax rate is approximately 37%. In addition, under the special law to secure funds for reconstruction from the 11 March disasters, a special additional national corporation tax (10% of the normal corporation tax due) is imposed for three tax years beginning on or after 1 April 2012.
- (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 December 2013 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).

## 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 25.5% for tax years beginning on or after 1 April 2012. For corporations capitalized at ¥100 million or less, a tax rate of 19% applies to the first ¥8 million of taxable income. The tax rate of 19% is reduced to 15% for tax years beginning between 1 April 2012 and 31 March 2015.

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 25.5% rate is approximately 37%. Under Business Scale Taxation (Gaikei Hyojun Kazei; see Section D), for certain corporations, the effective rate is reduced to approximately 36%.

In addition, under the special law to secure funds for reconstruction from the 11 March disasters, a special additional national corporation tax (10% of the normal corporation tax due) is imposed for three tax years beginning on or after 1 April 2012.

**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 2013. 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

The 2009 tax reform introduced two temporary capital gains reliefs with respect to the holding of land investments. Under one of these measures, a special deduction of ¥10 million may be claimed with respect to capital gains arising from the sale of land acquired during the period from 1 January 2009 to 31 December 2010 and held for a period of 5 years or more, subject to certain conditions. The other measure is a capital gain deferral mechanism applicable to qualifying land acquired in the period from 1 January 2009 through 31 December 2010. This measure provides a deferral of 80% or 60% of the amount of capital gains arising from land disposed within a certain time period after the date on which the land is acquired, subject to certain conditions and filing obligations.

**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, and corporations with a tax amount of ¥100,000 or less in the preceding year, 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 by a domestic corporation are subject to a 20% withholding tax.

For fiscal years beginning on or after 1 April 2009, a foreign dividend exemption system is available for Japanese companies holding a minimum interest of 25% for a period of at least six months before the date on which the decision to distribute the dividend is made. Under certain tax treaties, the minimum holding interest can be lower than 25%, subject to certain conditions. Under the foreign dividend exemption, 95% of foreign dividends received is excluded from taxable income. No credit for withholding tax or underlying tax on the foreign dividends is available.

**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). The 2009 tax reform abolished the indirect foreign tax credits for foreign income taxes paid by first- or second-tier foreign subsidiaries. However, under transitional measures, indirect foreign tax credits may still be available in certain cases. 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 in tax years beginning during the period of 1 April 2006 through 31 March 2012 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)
- Weighted average
- Moving average
- Most recent purchase
- 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	—	—
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	0.046	1.000	0.114

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*).

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) during the period of 1 June 1998 through 31 March 2012 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*).

For tax years beginning during the period of 1 April 2009 through 31 March 2012, a corporation may claim a credit equal to 8% to 12% of total current research and development (R&D) expenditure, up to a maximum amount equal to 30% of the corporate tax due for the relevant fiscal year. Unused credits arising in this period may be carried forward to tax years beginning during the period 1 April 2012 through 31 March 2013, subject to certain requirements.

For tax years beginning during the period of 1 April 2008 through 31 March 2012, corporations may also claim an additional credit up to 10% of the corporate tax due for certain incremental R&D expenditure or R&D expenditure in excess of specified recent average sales figures.

Tax credits for other investments in fields such as education and training or specific facilities are also available for certain periods. Some of these credits apply to only small or medium-sized corporations.

**Net operating losses.** Net operating losses of certain corporations may be carried forward for seven years, and may be carried back one year. The loss carryback is suspended for tax years ending from 1 April 1992 through 31 March 2012. However, this suspension does not apply to net operating losses generated in tax years ending on or after 1 February 2009 for specified small or medium-sized corporations.

**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.

The 2010 tax reform introduced special taxation for intra-group transactions in 100% groups. This taxation is separate from the CTRS.

#### D. Other significant taxes

The following table 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	1.5% to 3.26%
Companies that are not subject to Business Scale Taxation; rates applied to taxable income	2.7% to 5.78%
Special local corporate tax; a national tax, which is levied on companies that are subject to enterprise tax; imposed on local enterprise tax liability; with respect to taxable income	
Companies subject to business scale enterprise tax	148%
Companies not subject to business scale enterprise tax	81%
(The combined effect of the new rates of the enterprise tax and the introduction of the special local corporate tax do not cause any change to the total tax burden of corporate taxpayers.)	
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%

Nature of tax	Rate
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 ¥4,400,000
Social insurance contributions, on monthly standard remuneration and bonuses	
Basic contribution, paid by	
Employer	14.326%
Employee	13.546%
Nursing insurance premium for employees who are age 40 or older, paid by	
Employer	0.755%
Employee	0.755%

## 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 2011 revision of the law eliminated the hierarchy-based selection of transfer-pricing methods and allows the selection of the most appropriate transfer-pricing method in each specific case.

It is possible to reach transfer-pricing agreements in advance with the tax authorities. A taxpayer applying for a transfer-pricing agreement may be granted a grace period for the payment of taxes due by assessment, including penalty taxes. The length of the grace period depends on the specific circumstances of the assessment.

**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 10% 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 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 20% 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.

Dividends distributed by a tax-haven subsidiary cannot generally be excluded from tax-haven income added back to the parent company's taxable income. However, the following dividends received by a tax-haven subsidiary can be excluded from the apportionment to a parent company's income:

- Dividends from a foreign subsidiary in which the tax-haven subsidiary has held 25% or more of the total issued shares for a period of at least 6 months
- Dividends that have already been added to the Japanese parent company's taxable income as another tax-haven company's income under the tax-haven rules

**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	0/5/10 (m)	0/10 (c)	5
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)
Brunei			
Darussalam	5/10 (l)	10 (c)	10
Bulgaria	10/15 (a)	10 (c)	10
Canada	5/15 (a)	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)	0
Germany	10/15 (a)	10 (c)	10
Hong Kong SAR	5/10 (l)	10 (c)	5
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
Kazakhstan	5/15 (a)	10 (c)	5 (w)
Korea (South)	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 (x)	0/5/10 (y)	10 (z)	0 (aa)
New Zealand	15	15/20 (q)	20
Norway	5/15 (a)	10 (c)	10
Pakistan	5/7.5/10 (v)	10 (c)	10
Philippines	10/15 (l)	10 (c)	10 (g)
Poland	10	10 (c)	0/10 (i)
Romania	10	10 (c)	10/15 (i)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Saudi Arabia	5/10 (l)	10 (c)	5/10 (r)
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 (bb)	0/5/10 (y)	10 (z)	0 (aa)
Thailand	15/20 (s)	10/15/20 (c)(j)(q)	15
Turkey	10/15 (a)	10/15 (c)(j)	10
USSR (k)	15	10 (c)	0/10 (i)
United Kingdom	0/5/10 (t)	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% (Austria, more than 50%; Kazakhstan, 10%; Spain, directly 25%) of the distributing corporation for 6 months (Austria, Denmark, Germany and Indonesia, 12 months).
- (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 owns at least 25% of the voting shares of the company paying the dividends during the 6-month period immediately before the end of the accounting period for which the distribution of profits takes place 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 during the 6-month period immediately before the end of the accounting period for which the distribution of profits takes place. 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, or 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 10% (Philippines, 15%) if the recipient is not a corporation owning at least 10% of the voting shares (Philippines, or the total shares) of the distributing corporation during the six-month period ending on the date on which entitlement to the dividends is determined (Philippines, the day immediately preceding the date of payment of the dividends).
- (m) Dividends are exempt from withholding tax if the beneficial owner of the dividends owns directly at least 80% 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 at least 10% of the voting shares of the payer. The 10% rate applies to other dividends.
- (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 during the 6-month period immediately before the end of the accounting period for which the distribution of profits takes place. The 0% rate applies if the recipient of the dividends 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 certain types of interest payments such as interest paid to or by banks.
  - (q) Loan interest paid to nonresidents is subject to a 20% withholding tax. Interest paid to nonresidents on bonds, debentures or bank deposits is subject to a 15% withholding tax.
  - (r) The withholding rate for the use of, or the right to use, industrial, commercial or scientific equipment is 5%.
  - (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 6-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 6-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) The 5% rate applies 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 6-month period ending on the date on which the entitlement to dividends is determined. The 7.5% rate applies to dividends paid to a company owning directly or indirectly at least 25% of the voting shares of the payer for the 6-month period ending on the date on which the entitlement to dividends is determined. The 10% rate applies to other dividends.
  - (w) The withholding tax rate on royalties is 10% under the treaty. However, the reduced rate of 5% provided in the protocol dated 19 December 2008 applies.
  - (x) These are the rates under the revised treaty between Japan and the Netherlands, which is effective from 1 January 2012.
  - (y) Dividends are exempt from withholding tax if the company receiving the dividends owns at least 50% of the voting shares of the payer for the six-month period 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 at least 10% of the voting shares of the payer for the six-month period ending on the date on which entitlement to the dividends is determined. The 10% rate applies to other dividends.
  - (z) Interest paid to a contracting state, subdivision or certain financial institutions are exempt. The 10% rate applies to other interest payments.
  - (aa) Royalties are exempt from withholding tax if certain conditions are met.
  - (bb) These are the rates under the revised treaty between Japan and Switzerland, which is effective from 1 January 2012.

Japan signed a double tax treaty with Kuwait in 2010. It has not yet been ratified and taken effect. Under the treaty, a 5% rate will apply to dividends paid to a company owning at least 10% of the voting shares of the payer for the period of six months ending on the date on which entitlement to the dividends is determined. A 10% rate will apply to other dividends. Interest paid to a contracting state, subdivision or certain financial institutions will be exempt. A 10% rate will apply to other interest payments. A 10% rate will apply to royalties.

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*This chapter reflects the changes to the corporate tax regime in Jersey that take effect on 1 January 2012.*

### A. At a glance

Corporate Income Tax Rate (%)	0/10/20 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0/10/20 (a)
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	– (g)
Carryforward	Unlimited

- (a) The general rate is 0%. The 10% rate applies to certain regulated financial services companies. The 20% rate applies to utility companies, companies in the business of importation of oil to Jersey, and rental income, development profits and quarrying income derived from Jersey land.
- (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 by a Jersey individual and if no election is made to pay the interest gross. This rate is unlikely to be applied except in rare cases.
- (f) The 20% rate applies to patent royalties paid to individuals resident in Jersey.
- (g) See Section C.

## B. Taxes on corporate income and gains

**Corporate income tax.** Resident companies are subject to tax on their worldwide profits excluding capital gains.

In general, all companies incorporated in Jersey are considered resident. However, a company incorporated in Jersey is considered nonresident if the company's business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be subject to tax on any part of its income is 20% or higher and if the company is tax resident in that country. A company incorporated outside Jersey is regarded as Jersey resident if its business is managed and controlled in Jersey.

**Rates of corporate income tax.** Jersey has a general corporate income tax rate of 0% and a rate for certain regulated entities of 10%. Utility companies, companies in the business of importation of oil to Jersey, and rental income, development profits and quarrying profits derived from Jersey land are subject to income tax at a rate of 20%.

Regulated entities subject to the 10% tax rate are financial services companies that are registered or hold a permit in accordance with various laws administered by the Jersey Financial Services Commission and operate through a permanent establishment in Jersey. These companies include the following:

- Entities carrying out banking business, trust business or investment business
- Fund administrators or custodians

The 10% rate applies to business conducted through a Jersey company or a branch.

Unless certain conditions are met, an agent or tenant must deduct tax at a rate of 20% before paying rent to a nonresident landlord.

In 2009, the European Union (EU) found that specific measures within the 0-10 tax regime did not conform to the spirit of the EU Code of Conduct. The specific measures, which relate to provisions to levy tax on Jersey resident individual shareholders of Jersey companies using either deemed dividend or attribution mechanisms, were abolished, effective from 1 January 2012. The EU Code of Conduct Group accepted that the abolishment of the specific measures means that the regime is no longer harmful. The Economic and Financial Affairs Council (ECOFIN) ratified this acceptance in December 2011.

**International Business Companies.** The International Business Company (IBC) status was abolished, effective from 1 January 2012. 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 was lost, effective from 1 January 2009, when the 0-10 tax regime was introduced (see *Rates of corporate income tax*). An IBC may be a Jersey company, a foreign company controlled in Jersey or a Jersey branch or permanent establishment of a non-resident company.

The statutory tax rates for profits derived from international activities by an IBC range from 0.5% to 2%. 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.

**Exempt companies.** Jersey exempt company status was abolished, effective from the 2009 year of assessment.

**Capital gains.** Jersey does not impose a tax on capital gains.

**Administration.** Corporate income tax returns must be filed by 6:00 pm on the last Friday in July in the year in which the notice is served. A £250 penalty is imposed for the failure to file the 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 date of the issuance of the assessment. A 10% surcharge is imposed if tax remains unpaid as of the deadline, which is 6:00 pm on the Friday following the first Monday in December in the year following the year of assessment.

The basis of assessment for trading is profits arising in the current accounting period.

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 may be deemed to be paid net of tax. The rate depends on the tax rate applicable to the profits from which the dividend was paid.

Before 1 January 2012, an individual resident in Jersey who owned more than 2% of the ordinary share capital in a Jersey trading company or Jersey financial services company was required to pay tax on deemed dividends. In addition, an individual resident in Jersey who owned more than 2% of the ordinary share capital in a Jersey investment holding company was required to pay tax on his or her portion of the company’s relevant profits. As noted in *Rates of corporate income tax*, these provisions have been abolished effective from 1 January 2012.

**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 currently 35%. 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 of 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 entered into double tax treaties with Guernsey, Malta and the United Kingdom. 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.

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 Jersey.
- 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 Jersey’s economy.

Jersey recently entered into various tax information exchange agreements (TIEAs) and some limited double tax agreements. The TIEAs provide for the exchange of information between tax authorities, on request, with respect to the tax position of resident persons. The limited double agreements provide for the allocation of taxing rights with respect to certain income derived by individuals and enterprises operating ships and aircraft in international traffic.

### C. Determination of trading income

**General.** The amount assessable is based on the accounting profit, adjusted for tax purposes.

Revenue expenses incurred wholly and exclusively for the purposes of a trade or the managing of investments are deductible.

**Inventories.** No statutory rules prescribe 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).** 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.

Capital allowances are 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 written-down tax value of the pool or if the business is terminated.

**Groups of companies.** A qualifying company that suffers a loss may surrender the loss to another qualifying company in the same group. The company receiving the loss can then offset the loss against its profits or gains. The loss can be offset only against

profits or gains determined for an accounting period that is the same as, or overlaps with, the financial period in which the loss arises. For these purposes, a qualifying company is a regulated entity that is taxed at a rate of 10% (see Section B).

Companies taxed at 0% that are part of a group may also surrender losses to offset the profits of another company taxed at 0% in the group. This benefits the Jersey shareholders of such companies by reducing the profits subject to the deemed distribution rules (see Section B). As noted in *Rates of corporate income tax*, these deemed distribution rules are abolished, effective from 1 January 2012.

**Relief for losses.** Companies subject to tax at the 0% or 10% rates can relieve losses by carrying the losses forward and offsetting them against future profits or by surrendering losses under the group relief measures (see *Groups of companies*).

Losses incurred by companies subject to tax at a rate of 20% may be used to offset either income for the year in which the losses were incurred or profits derived from the same trade in the immediately preceding year of assessment. 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.

Nature of tax	Rate (%)
Social security contributions; on salaries of employees resident in Jersey; payable by Employer (maximum monthly contribution for each employee of £239.59) (Effective from 1 January 2012, employers are required to pay an additional contribution of 2% on the earnings of employees above £44,232 and up to £150,000 per year.) Employee (maximum monthly contribution of £221.16)	6.5 6
Goods and Services Tax; on domestic supplies of goods and services; an exception applies to certain entities owned by nonresidents of Jersey or certain regulated entities on application	5

#### 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.

**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</b>	<b>Royalties</b>
	%	%	%
Guernsey	0*	0	0
Malta	0*	0	0
United Kingdom	0*	0	0
Nontreaty countries	0*	0	0

\* See Section B.

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**A. At a glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	
On Shares	30 (b)
On Depreciable Assets	30 (a)
Branch Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	0
Interest	5 (c)
Other Payments to Nonresidents	7
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

(a) This is the maximum rate. For a listing of rates, see Section B.

(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 circumstances exists:

- The place of performance of work is located in Jordan.
- The place of delivery of work is located in Jordan.
- The place of signing the contract is located in Jordan.
- Jordanian capital is invested outside Jordan.

**Rates of corporate tax.** Corporate income tax in Jordan is imposed at flat rates. Rates for resident corporations vary from 14% to 30%, depending on the type of activity. The following are the corporate income tax rates.

Sector	Rate (%)
Banking	30
Insurance, telecommunications, stockbrokers, finance companies, currency-exchange companies and leasing companies	24
Others	14

**Capital gains.** Banks, financial companies, insurance companies, foreign-exchange dealers and finance leasing companies are subject to tax on their capital gains derived from sales of shares and bonds in Jordan. For other companies, capital gains derived from sales of shares in Jordan are exempt from tax (except for goodwill). However, a formula is used to calculate the disallowed part of the cost. This formula is the ratio of exempt income to total income, multiplied by total allowable cost. Capital gains derived from sales of shares in foreign markets that arise from Jordanian funds are subject to income tax.

Income derived from current assets, which are assets held for less than one year, and from depreciable assets are taxable as ordinary income.

**Administration.** The tax year for corporations is their accounting (financial) year. Tax returns must be filed on a prescribed form in Arabic within four months after the tax year-end.

The tax return includes a payroll listing and information pertaining to goods and services supplied for the year, including details related to the corporation's income, expenses, exemptions, and tax due.

The total amount of tax due must be paid at the time of filing to avoid penalties.

The tax authorities may conduct an income tax audit for up to five previous years and charge the company additional tax.

Taxpayers that have gross income exceeding JD 500,000 must make payments on account. The tax regulations provide the following schedule for payments on account for companies that adopt the calendar year as their fiscal year.

Tax year	Percentage of preceding	Due dates
	year's tax	
	%	
2011	25	July 2011 and January 2012
2012	37.5*	July 2012 and January 2013

\* This percentage will also apply to the years following 2012.

**Dividends.** Dividends received are exempt from tax except for dividends received by banks and financial institutions from mutual investment funds. Twenty-five percent (subject to change) of dividend income must be added back to income if it does not exceed the total allowable costs; that is, the cap for disallowed expenses is the lower of 25% of dividends or reported 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 resident companies and a final tax for individuals and nonresident companies. Interest paid by local banks on foreign banks' deposits is exempt from income tax.

**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.

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 not allowed as tax deductions, except for insurance companies' reserves and doubtful debts' provisions for banks.

**Tax depreciation.** Depreciation for tangible and intangible assets is not addressed in the Income Tax Law 28 for 2009, but instructions are expected to be issued on this matter. Until such instructions are issued, taxpayers must refer to the depreciation measures in prior laws.

The Income Tax Law allows assets with a value of less than JD 100 to be expensed in the year of purchase of the assets.

The Income Tax Department establishes statutory maximum depreciation rates for various fixed assets. If the rates used for accounting purposes are greater than the prescribed rates, the excess is disallowed but may be used for tax purposes at a later date. The following are some of the maximum straight-line depreciation rates.

Asset	Rate (%)
Industrial buildings	4
Buildings	2
Office equipment	10
Motor vehicles	15
Plant and machinery	10 to 20*

\* The rate is 25% for computer equipment.

The taxpayer may choose to use the accelerated method. Under this method, twice the straight-line rate is applied (except for buildings).

Machinery and equipment and other fixed assets that are imported on a temporary-entry basis (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 the above statutory rates, which are applied to 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.** Companies must file separate financial statements for tax purposes.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
General sales tax (similar to value-added tax)	16
Social security contributions, on salaries and all benefits except overtime; paid by	
Employer	12.25
Employee	6.5
Withholding tax on imports; imposed on the value of goods imported for resale; paid on account against the taxpayer's final tax liability	2
Withholding tax on payments to nonresident service providers	7

#### E. Miscellaneous matters

**Foreign-exchange controls.** Jordan does not impose any foreign-exchange controls.

**Debt-to-equity rules.** New thin-capitalization rules have been introduced. Interest paid on loans in excess of the following debt-to-equity ratios is not deductible.

Year	Ratio of debt to higher of capital or average equity
2011	5:1
2012	4:1
2013 and future years	3:1

#### F. Tax treaties

Jordan has entered into double tax treaties with Algeria, Azerbaijan, Bahrain, Bulgaria, Canada, Croatia, the Czech Republic, Egypt, France, India, Indonesia, Iran, Iraq, Korea (South), Kuwait, Lebanon, Libya, Malaysia, Malta, the Netherlands, Pakistan, the Palestinian Authority, Poland, Qatar, Romania, Sudan, Syria, Tunisia, Turkey, Ukraine, 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.

The following is a table of treaty withholding tax rates.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Algeria	15	15	15
Bahrain	10	10	10
Bulgaria	10	10	10
Canada	10/15	10	10
Croatia	10	10	10
Czech Republic	10	10	10
Egypt	15	15	20
France	5/15	0/15	5/15/25
India	10	10	20
Indonesia	10	10	10
Korea (South)	10	10	10
Kuwait	5/10	5	30
Lebanon	10	10	10
Malaysia	10	15	15
Malta	10	10	10
Netherlands	15	5	10
Pakistan	10	10	10
Palestinian Authority	— (a)	— (a)	— (a)
Poland	10	10	10
Qatar	10	5	10
Romania	15	12.5	15
Sudan	15	15	15
Syria	10	10	18
Tunisia	— (a)	— (a)	— (a)
Turkey	10/15	10	12
Ukraine	10	10	10
United Kingdom	10	10	10
Yemen	10	10	10
Nontreaty countries	0	5 (b)	7

(a) The treaty does not provide for a maximum withholding tax rate.

(b) See Section B.

Jordan is negotiating double tax treaties with Italy, Morocco and Serbia.

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*The chapter below reflects the law in Kazakhstan as of 1 January 2012.*

**A. At a glance**

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Permanent Establishment Tax Rate (%)	20
Branch Profits Tax Rate (Additional Tax) (%)	15 (a)
Withholding Tax (%)	
Dividends	15 (b)(c)
Interest	15 (c)
Royalties from Patents, Know-how, etc.	15 (c)
Capital Gains	15 (c)
Other Income	20
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

- (a) This tax is imposed on the taxable profits of permanent establishments 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, except for dividends paid by private risk unit investment funds and joint-stock risk investment funds.
- (c) A 20% withholding tax rate applies to Kazakh-source income paid to entities registered in tax havens.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Kazakhstan legal entities and foreign legal entities operating through a permanent establishment are subject to tax. The definition of “permanent establishment” is generally similar to the definition in the model treaty of the Organization for Economic Cooperation and Development, without the standard exemptions but with certain peculiarities. Kazakhstan tax resident legal entities are subject to tax on their worldwide income. Non-resident legal entities are subject to tax on income from Kazakh sources that are earned through a permanent establishment.

**Rates of corporate tax.** The regular corporate income tax rate is 20%. This rate applies to Kazakhstan companies, including enterprises with foreign participation (joint ventures) and companies with 100% foreign participation, and permanent establishments of foreign companies.

Permanent establishments are also subject to a 15% tax on their profits after deduction of corporate income tax. The 15% tax is imposed regardless of whether the profits are remitted to the home country of the permanent establishment.

Payments to foreign or nonresident legal entities without a permanent establishment are subject to withholding tax. The rate is 15% for dividends, interest, royalties, capital gains and insurance premiums. For reinsurance premiums and international transportation services, the rate is 5%. For all other payments, the rate is 20%. The rate is 20% for payments of any type of Kazakh-source income to tax-haven entities.

*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. The taxation under such contracts differs from the standard regime.

**Tax incentives.** Currently, the following six special-economic zones are in existence in Kazakhstan:

- Astana-New City
- Information Technology Park
- Sea Port Aktau
- Ontustyk
- Burabai
- National Industrial Petrochemical Technopark

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 and payments for the use of land plots. In addition, an exemption from social tax may be applied by entities carrying out their activities in the Information Technology Park special-economic zone. The tax benefits may be claimed by entities that meet certain requirements established by the Tax Code.

Expenditure on certain qualifying fixed assets can be deducted in the first three years after commissioning, with each deduction equaling one-third of the initial value of the asset. Alternatively, it can be deducted in full in the tax year in which the expenditure is incurred.

**Capital gains.** Capital gains are included in taxable profit and subject to tax at the regular corporate income tax rates. For non-residents, certain capital gains are taxed by withholding tax.

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

Legal entities must make advance payments of tax on or before the 25th day of each month. These payments are based on the estimated income and corporate income tax due for the current year. Annual tax returns must be filed by 31 March of the year following the tax year. Corporate income tax due must be paid within 10 calendar days after the deadline for filing annual tax returns. The following legal entities are not required to make advance payments of tax:

- Legal entities that had adjusted aggregate annual income not exceeding 325,000 monthly calculation indices (this index is established annually) in their antepenultimate tax year

- Legal entities in their year of registration and in the following year

**Dividends.** Dividends paid to nonresident legal entities are subject to withholding tax at a rate of 15% (for legal entities from tax-haven countries, a 20% rate applies). Dividends paid to resident legal entities are exempt from withholding tax except for dividends paid by private risk unit investment funds and joint-stock risk investment funds.

For purposes of the Tax Code, resident legal entities are legal entities created in accordance with Kazakhstan legislation and legal entities with their place of effective management (actual management body) located in Kazakhstan.

**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 amounts that may be offset are determined for each country separately and equal the lowest amount of the following:

- The amount actually paid in a foreign state on income received by a taxpayer outside of Kazakhstan
- The amount of income tax on income received by a taxpayer outside Kazakhstan, calculated in accordance with the Tax Code and the provisions of an international treaty

### C. Determination of taxable income

**General.** Under accounting legislation, large business entities, financial institutions, joint stock companies and certain other 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 National Accounting Standards.

In general, taxable profit equals the difference between annual aggregate income and allowable deductions. Income and expenses in accounting records generally serve as the basis for the calculation with adjustments.

In general, under the Tax Code, all properly documented expenses related to activity aimed at generation of revenues are deductible, unless the Tax Code explicitly indicates that a certain expense is nondeductible.

Interest payable to residents and nonresidents is deductible up to an amount calculated on the basis of the following formula:

$$(A + E) + \left(\frac{OC}{AL}\right) \times (MC) \times (B + C + D)$$

The following are descriptions of the items contained in the above formula:

- “A” is the amount of the interest, excluding amounts included in values B, C, D and E.
- “B” is the amount of interest payable to a related party, excluding amounts included in value E.

- “C” is the amount of remuneration payable to persons registered in a state with a preferential tax regime (tax haven), excluding amounts included in value B.
- “D” is the amount of interest payable to an independent party with respect to loans granted against a deposit or a secured guarantee, surety bond or other form of security provided by related parties in the event of the enforcement of the guarantee, surety bond or other form of security, excluding amounts included in value C.
- “E” is the amount of remuneration for credits (loans) issued by a credit partnership established in Kazakhstan.
- “MC” is the marginal coefficient – seven for financial institutions and four for others.
- “OC” is the average annual amount of owners’ capital.
- “AL” is the average annual amount of liabilities.

The amount of interest in excess of the amount calculated under this formula is not deductible.

Subsurface users (see Section B) may deduct in the form of depreciation deductions expenses incurred during the exploration period 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 begins after commercial discovery. They may set the annual depreciation rate at their discretion, but the rate may not exceed 25%.

**Provisions.** Banks and insurance companies may deduct provisions for doubtful and bad debts in an amount established by the National Bank of Kazakhstan and agreed to by the authorized state body. Other entities may generally deduct actual 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%. Depreciation rates for subsurface users 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 generally carry forward tax losses from business activities to offset annual taxable profits in the following 10 tax 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	12
Exports of goods	0
Export duties on certain types of goods (for example, crude oil 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 or U.S. dollars per unit of measurement	
Percentage rates	Various
Excise taxes on certain goods; the tax is calculated as a specified amount of tenge per unit or a specified percentage of the customs value	
Percentage rates	Various
Property tax; imposed on annual average balance-sheet value of immovable property	1.5
Payroll taxes	
Personal income tax, payable by employee; calculated at a flat general rate	10
Social tax, paid by employer; calculated at a flat rate	11
Pension fund contributions; withheld from employees' salaries; the maximum base used to calculate the monthly contributions is KZT 1,199,925 (approximately US\$8,108)	
Standard rate	10
Social insurance contributions paid by employers and self-employed individuals; the base used to calculate the monthly contributions may not exceed KZT 159,990 (approximately US\$1,081)	
Percentage rate	4
Rent tax on crude oil and gas condensate for export	
Percentage rates	3 to 32

Other taxes include land tax and vehicle owners' tax.

## E. Miscellaneous matters

**Foreign-exchange controls.** The currency in Kazakhstan is the tenge (KZT).

The principal measures governing foreign-exchange controls in Kazakhstan are the Law on Currency Regulations and Currency Control (13 June 2005), as amended, 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, Kazakhstan legal entities, representative offices and branches of Kazakhstan legal entities in and outside Kazakhstan, diplomatic, trade and other official representative offices of Kazakhstan, located outside Kazakhstan, and foreign citizens having a Kazakh residency permit)
- Rules for nonresidents (that is, foreign citizens, foreign companies, representative offices and branches of foreign legal entities, international organizations, and diplomatic and other official representative offices of foreign countries)

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 nonresidents.

**Transfer pricing.** The Transfer Pricing Law strengthens controls over prices used by taxpayers in cross-border transactions and certain domestic transactions related to cross-border transactions. The law does not differentiate between related and unrelated parties in applying transfer-pricing controls (for example, no price deviation allowed for unrelated parties). The law contains extensive transfer-pricing documentary and monitoring requirements that include, among other items, industry, market, functional and risk analysis. Under the law, the following methods may be used to determine the market price:

- Comparable uncontrolled price method
- Cost-plus method
- Subsequent resale price method
- Profit-split method
- Net margin method

## F. Treaty withholding tax rates

The following table lists the withholding rates under Kazakhstan's tax treaties.

	Dividends	Interest	Royalties
	%	%	%
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
Japan	5/15 (b)	10	10
Korea (South)	5/15 (b)	10	10
Kyrgyzstan	10	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Latvia	5/15 (a)	10	10
Lithuania	5/15 (a)	10	10
Malaysia	10	10	10
Moldova	10/15 (a)	10	10
Mongolia	10	10	10
Netherlands	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	5/10 (a)	10	10
Slovak Republic	10/15 (e)	10	10
Spain	5/15 (b)	10	10
Sweden	5/15 (b)	10	10
Switzerland	5/15	10	10
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 (f)	15 (f)	15 (f)

- (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) The 10% rate applies to dividends paid to companies owning at least 30% of the payer. The 15% rate applies to other dividends.
- (f) For payments to legal entities from tax havens, the rate is 20%.

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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)
Commissions	20 (e)
Management, Professional and Training Fees	20 (f)
Sports and Entertainment Fees	20 (g)
Telecommunication Service Fees	5 (g)
Rent	
Real Estate (Immovable Property)	30 (g)
Equipment	15 (h)
Winnings from betting and gaming	20 (i)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	4 (j)

- (a) This tax applies to 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. The following commissions are exempt from withholding tax:
- Commissions paid to nonresident agents with respect to flower, fruit or vegetable auctions
  - Commissions paid by resident air transport operators to nonresident agents to secure tickets for international travel
- (f) This rate applies to management, professional and training fees paid to nonresidents. However, for consultancy fees, payments to citizens of other East African Community countries are subject to a reduced withholding tax rate of 15%. For residents, management, professional and training fees are subject to a withholding tax rate of 10%. The resident withholding tax rate for contractual fee payments is 3%.
- (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. Rent paid to residents under leases of machinery and equipment is exempt from withholding tax.
- (i) This rate applies to payments to residents only.
- (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 is imposed on 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. Turnover tax does not apply to rental income, management or professional or training fees, income of incorporated companies or income that is subject to a final withholding 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.

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 non-taxable income, such as dividends and capital gains, and for non-deductible 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	—
Telecommunication equipment	20	—
Computer software	20	—
Irrevocable right to use fiber optic cable	5	—
Industrial buildings	—	10*
Hotel buildings	—	10*
Hostel, educational and training buildings	—	50*
Commercial and rental residential buildings	—	25*
Farming operations	—	100

\* The rate for the buildings 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. To qualify for the above deduction, commercial and rental residential buildings must be provided with roads, power, water sewers and other social infrastructure. In addition, rental residential buildings must be constructed in a planned developed area approved by the Minister responsible for matters relating to housing.

Deduction on capital expenditure incurred under concessionaire arrangements is claimed in equal proportions over the period of the concession.

A 100% investment allowance is granted for capital expenditure on industrial buildings and hotels and on machinery installed on such structures. Licensed local film producers also qualify for a 100% investment allowance with respect to the purchase of film equipment. An investment deduction may be claimed at a rate of 150% if an investment for manufacturing purposes is made outside the city of Nairobi and the municipalities of Mombasa or Kisumu and if the investment value is KSH 200 million or more.

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.** Tax deficits (losses) are allowable deductions in the year in which they arise and in the following four years of income. 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 a year from one of the specified sources, the loss may be 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 rates	0/12
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 transfer-pricing 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
- 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**

<b>Payee resident in</b>	<b>Dividends %</b>	<b>Interest %</b>	<b>Royalties/ management and professional fees %</b>
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 (%)	22 (a)(b)
Capital Gains Tax Rate (%)	22 (a)(b)(c)
Branch Income Tax Rate (%)	22 (a)(b)
Branch Profits Tax Rate (Additional Tax) (%)	– (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	10

- (a) This is the maximum rate. The lower rate of 10% applies to taxable income up to W 50 billion (see Section B).
- (b) Local income surtax (formerly referred to as 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) Only small and medium-sized enterprises are entitled to carry back losses.

## 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 are indicated below.

*Domestic corporations.* Corporate income tax is imposed at a rate of 10% on taxable income up to W 200 million, at a rate of 20% on taxable income from W 200 million up to W 50 billion, and at a rate of 22% exceeding W 50 billion. Local income surtax (formerly referred to as resident surtax) equal to 10% of corporate tax is also imposed (see Section D), resulting in an effective tax rate of 24.2% on taxable income exceeding W 50 billion.

*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

*Foreign corporations without a domestic business operation.* A foreign corporation that does not have a domestic business place (that is, a “permanent establishment”) 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	20%
Gain from transfer of securities or shares	Lesser of 10% of the gross sales price and 20% of net gain

Local income surtax (formerly referred to as 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
- 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
- An office involved in advertising, public relations, collecting and furnishing information, market survey, and other preparatory or auxiliary activities
- The place to maintain an asset belonging to the enterprise solely for the purpose of processing by another enterprise

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 Strategy and Finance.

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 their qualified 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, property tax and customs duty.

**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, the tax due may be paid in installments.

**Dividends.** A corporation must include dividends received in taxable income. However, dividends received by a domestic corporation from another domestic corporation are deductible from taxable income according to a formula provided in the measure entitled "Dividends Received Deduction."

**Foreign tax relief.** A tax credit is allowed for corporate taxes paid to a foreign government. The foreign tax credit relief is limited to the lesser of the tax paid abroad or the Korean tax amount multiplied by the ratio of income from foreign sources to total taxable income. If a company has places of business abroad in two or more countries, the corporation may determine the foreign tax credit limitation for each country individually or for all the countries together. If the amount of the foreign tax credit is limited by this rule, the excess foreign tax paid over the limitation may be carried forward for up to 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)
- Retail

If a corporation fails to notify the tax office, it must use FIFO for tax purposes.

### 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 30 days' salary or more 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 20% 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 permitted funding methods specified by the tax law include the depositing of an amount equal to the excess portion in a retirement pension account with qualified institutions, such as insurance companies, banks and the Korea Workers' Compensation and Welfare Service.

*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

**Relief for losses.** Tax losses can be carried forward for 10 years. Small and medium-sized enterprises may carry back losses one year.

**Groups of companies.** Effective from 1 January 2010, a consolidated tax return is available for a group containing a parent company and its 100%-owned subsidiaries. The consolidated tax return allows losses of group companies to be offset against profits of other group companies. After the parent company elects tax consolidation, it must maintain the consolidation for the subsequent five years and apply the consolidation to all 100%-owned subsidiaries.

## D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Local income 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	3
Acquired for business purposes in a major city	7
Registration license tax, including local education surtax	
Normal rate on registration of incorporation	0.48
Registration of incorporation in a major city	1.44
Payroll taxes, including local income surtax, on salaries and wages	6.6 to 36.3

### E. Transfer pricing

Korea has transfer-pricing rules. The acceptable transfer-pricing methods include comparable uncontrolled price, resale price, cost-plus, profit-split, the transactional net margin method (TNMM) and other reasonable methods designated by the tax law. 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
Azerbaijan	7	7	10	5	10
Bangladesh	10	15	10	10	10
Belarus	5	15	10	5	5
Belgium	15	15	10	10	10
Brazil	10	10	15 (c)	10	10 (d)
Bulgaria	5	10	10	5	5
Canada	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
Estonia (b)	5.5	11	11	5.5	11
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
Iceland	5	15	10	10	10

	Dividends		Interest	Royalties	
	A	B		C	D
	%	%	%	%	%
India	15	20	15	15	15
Indonesia	10	15	10	15	15
Iran (b)	11	11	11	11	11
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
Latvia	5	10	10	5	10
Lithuania	5	10	10	5	10
Luxembourg	10	15	10	10	15
Malaysia	10	15	15	10	15
Malta	5	15	10	0	0
Mexico	0	15	15 (j)	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	27.5	16.5	16.5	16.5
Poland	5	10	10	10	10
Portugal	10	15	15	10	10
Qatar (b)	11	11	11	5.5	5
Romania	7	10	10	7	10
Russian Federation	5	10	0	5	5
Saudi Arabia	5	10	5	5	10
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	10	10	15 (m)	15	10 (n)
Tunisia	15	15	12	15	15
Turkey	15	20	15 (a)	10	10
Ukraine	5	15	5	5	5
United Arab Emirates	5	10	10	0	0
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 (k)	5.5	11
Vietnam	10	10	10	5	15
Nontreaty countries (b)(g)(l)	22	22	22	22	22

- A Controlling parent.
- B Other shareholders.
- C Industrial royalties.
- D Other royalties.
- (a) Reduced to 10% if repayment period is over two years.
- (b) Local income surtax, which equals 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 paid to 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) Reduced to 5% for interest paid to banks.
- (k) Reduced to 5.5% for interest paid to banks or financial institutions.
- (l) See Section B.
- (m) Reduced to 10% for interest beneficially owned by a financial institution (including an insurance company).
- (n) Reduced to 5% for royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, including software, motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television broadcasting.

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*This chapter reflects measures in Law No. 2 of 2008 and the Executive Bylaws (the Bylaws) to such law. Law No. 2 of 2008, which is effective for fiscal years beginning after 3 February 2008, introduced several significant tax changes, including a reduction in the corporate tax rate from a maximum of 55% to a flat rate of 15%.*

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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	15 (b)
Interest	0 (c)(d)
Royalties	0 (c)
Management Fees	0 (c)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (e)

- (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 tax rate was 55%. The maximum rate under Law No. 23 of 1961, which applies to profits derived from the operations in the Divided Neutral Zone, is 57%. For further details, see Section B.
- (b) This rate applies only to dividends distributed by companies listed on the Kuwait Stock Exchange (see Section B).
- (c) This income is treated as ordinary business income and is normally assessed on a deemed profit ranging from 98.5% to 100%.
- (d) Under Article 2 of the Bylaws, income derived from the granting of loans by foreign entities in Kuwait is considered to be taxable income in Kuwait, which is subject to tax at a rate of 15%. Previously, foreign banks that solely granted loans in Kuwait were not taxed on the interest income received with respect to these loans.
- (e) Article 7 of the Bylaws provides that losses can be carried forward for a maximum of three years (as opposed to an unlimited period under the prior tax law) 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 and its amendments contained in Law No. 2 of 2008.

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. Law No. 2 of 2008 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.

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

**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
- 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.

Licenses under the DFCIL are awarded for projects of strategic importance to Kuwait that are undertaken in Kuwait. These include projects involving the transfer of technology or technical expertise and projects creating job opportunities for Kuwaiti nationals and contributing to the training of Kuwaiti nationals. It appears that very few projects have been approved so far under 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.
- 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 foreign shareholders are treated as normal business profits and are subject to tax at the rates stated above.

Article 1 of Law No. 2 of 2008 and Article 8 of the Bylaws provide for a possible tax exemption for profits generated from dealing in securities on the Kuwait Stock Exchange (KSE), whether directly or through investment portfolios. However, no further clarifications have been provided regarding the definitions of “profits” and “dealing.”

**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.

The tax authorities have issued notifications restating the requirement that taxpayers comply with Article 13 and Article 15 of the Bylaws, which relate to the preparation of books and accounting

records and the submission of information together with the tax declaration.

Article 13 requires that taxpayers enclose the prescribed documents, such as the trial balance, list of subcontractors, list of fixed assets and inventory register, together with the tax declaration.

Article 15 requires that taxpayers prepare the prescribed books of accounts, such as the general ledger and the stock list.

In the event of noncompliance with the above regulations, the DIT may finalize an assessment on a basis deemed reasonable by the DIT. The Bylaws provide that a taxpayer must register with the DIT within 30 days after signing its first contract in Kuwait. The prior tax law did not specify a period. In addition, a taxpayer is required to inform the Ministry of Finance (MOF) of any changes that may affect its tax status within 30 days after the date of the change. The taxpayer must also inform the MOF of the cessation of activity within 30 days after the date of cessation.

Under the Bylaws, a new system of tax cards is introduced. All taxpayers are issued tax cards that are renewable annually. All government departments and public authorities are prohibited from dealing with companies that do not hold an active tax card. The information required to be included in the tax card application form is generally the information that is provided to the MOF at the time of registration. Currently, applications for tax cards are being accepted and the MOF is updating its database.

A tax declaration must be filed on or before the 15th day of the 4th month following the end of the tax period (for example, 15 April in the case of a 31 December year-end). Tax is payable in 4 equal installments on the 15th day of the 4th, 6th, 9th and 12th months following the end of the tax period, provided that the tax declaration is submitted on or before the due date for filing. The Bylaws provide that a request for extension of time for the filing of the tax declaration must be submitted to the DIT by the 15th day of the 2nd month (the 3rd month under the prior law) after the fiscal year-end. The maximum extension of time that may be granted is 60 days (75 days under the prior law).

In the event of a failure to file a tax declaration by the due date, a penalty that equals 1% of the tax for each 30 days or fraction thereof during which the failure continues is imposed. In addition, in the event of a failure to pay tax by the due date, a penalty that equals 1% of the tax payment for each period of 30 days or fraction thereof from the due date to the date of the settlement of the tax due is imposed.

Ministerial Order No. 16 of 1997, which was issued by the MOF, 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 MOF, on submission of a request by a taxpayer, the Assistant Undersecretary to the MOF may reconsider the final assessment issued by the DIT if errors of fact exist. The DIT issues its decision based on the opinion received from the Undersecretary of the MOF within 60 days after the date of submission of the request by the taxpayer.

Under the prior tax law, if an assessment of tax had not yet been issued by the DIT, it was possible to revise the tax declaration for a fiscal period by submitting to the DIT a letter providing details of the proposed amendments and their effect on the taxable results. The Bylaws allow companies to submit a revised tax declaration, but they are unclear with respect to the procedure for filing a revised declaration.

If the DIT accepts the amended tax declaration, the date of filing of the revised tax declaration is considered to be the actual date of filing the declaration for the purpose of imposing delay fines.

Law No. 2 of 2008 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.

Article 13 of the Bylaws provides that companies that may not be subject to tax based on the application of any tax laws or other statutes or based on double tax treaties must submit tax declarations in Kuwait.

**Dividends.** Under the prior tax law, no tax was imposed on dividends paid to foreign shareholders by Kuwaiti companies. However, tax was assessed on the share of profits attributable to foreign shareholders according to the audited financial statements of the company, adjusted for tax purposes.

Under Law No. 2 of 2008, dividends received by the investors in companies listed on the Kuwait Stock Exchange are subject to a 15% withholding tax. The tax must be withheld by the foreign investor's custodian or broker in Kuwait. The MOF requires the local custodian or broker of the foreign investor to provide information about the foreign investor, deduct 15% tax on payments of dividends to the foreign investor and deposit the tax with the MOF.

100% GCC-owned investors are also subject to withholding tax in Kuwait by local custodians or brokers until they are able to obtain a tax clearance certificate indicating that they are not subject to tax in Kuwait.

The MOF recently issued forms to allow 100% GCC-owned investors and investors from countries with which Kuwait has a double tax treaty to obtain a tax-clearance certificate for exemption or reduction of withholding tax on dividends received from companies listed on the KSE.

An entity that wants to claim a lower withholding tax rate in accordance with a tax treaty needs to approach the MOF and apply for a refund.

Article 46 of the Bylaws provides that investment companies or banks that manage portfolios or funds or act as custodians of listed shares for foreign entities must withhold corporate tax due from amounts paid to such foreign entities. The amount withheld must be deposited within 30 days after the date of withholding,

together with a list showing the names of the foreign entities and the amounts of corporate tax withheld. The DIT requires investment companies or banks that manage portfolios or funds to comply with this rule.

However, foreign shareholders in unlisted Kuwaiti companies continue to be assessed on the share of profits attributable to foreign shareholders according to the audited financial statements of the 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.

**Foreign-currency exchange gains and losses.** Under Executive Rule No. 36 of 2010, gains and losses on foreign currency conversion are classified into realized gains and losses and unrealized gains and losses.

Realized gains and losses resulting from the fluctuation of exchange rates are considered taxable gains and allowable losses if the taxpayer can substantiate the basis of the calculations and provides documents in support of such transactions.

Unrealized gains are not considered to be taxable income, and unrealized losses are not allowed as deductible expenses.

**Design expenses.** Costs incurred for engineering and design services provided are restricted to the following percentages:

- 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, provided the company complies with the regulations for retention of 5% and submission of the contract with the associated company to the DIT.
- If design work is carried out by a third party, 85% to 90% of the design revenue is allowed as costs, provided the company complies with the regulations for retention of 5% and submission of the contract with the third company to the DIT.
- If the design revenue is not specified in the contract, but design work needs to be executed outside Kuwait, tax authorities may use the following formula to determine the revenue:

$$\text{Design revenue for the year} = \frac{\text{Design costs for the year} \times \text{annual contract revenue}}{\text{Total direct costs for the year}}$$

**Consultancy costs.** Costs incurred for consultancy costs incurred outside Kuwait are restricted to the following percentages:

- If consultancy work is carried out in the head office, 70% to 75% of the consultancy revenue is allowed as costs.

- If consultancy work is carried out by an associated company, 75% to 80% of the consultancy revenue is allowed as costs if the company complies with the regulations for the 5% retention on payments and the submission of the contract with the associated company to the DIT.
- If consultancy work is carried out by a third party, 80% to 85% of the consultancy revenue is allowed as costs if the company complies with the regulations relating to the 5% retention and the submission of the contract with the third party to the DIT.
- If the consultancy revenue is not specified in the contract, but consultancy work needs to be executed outside Kuwait, the tax authorities may use following formula to determine the revenue:

$$\text{Consultancy revenue for the year} = \frac{\text{Consultancy costs for the year} \times \text{annual contract revenue}}{\text{Total direct costs for the year}}$$

**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 Law. 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 2% of revenue, net of any subcontractors' costs paid to the agent and reimbursed costs.

**Head office overhead.** Article 5 of the Bylaws provides that the following head office expenses are allowed as deductions:

- Companies operating through an agent: 1.5% (previously 3.5%) of the direct revenue
- Companies participating with Kuwaiti companies: 1% (previously 2%) of the foreign company's portion of the direct revenue generated from its participation in a Kuwaiti company
- Insurance companies: 1.5% (previously 2%) of the company's direct revenue
- Banks: 1.5% (previously 2%) of the foreign company's portion of the bank's direct revenue

Article 5 of the Bylaws also provides that for the purpose of computation of head office overheads, direct revenue equals the following:

- For companies operating through an agent, companies participating with Kuwaiti companies and banks: gross revenue less subcontract costs, reimbursed expenses and design cost (except for design cost carried out by the head office)
- For insurance companies: direct premium net of share of reinsurance premium, plus insurance commission collected

**Reimbursed costs.** For deemed profit filings, reimbursed costs are allowed as a deductible expense if the following conditions are satisfied:

- Such costs are necessary and explicitly mentioned in the contract.
- Such costs do not exceed 30% of gross revenues.
- Supporting documentation is available for such costs.

In addition, if reimbursable costs exceed 30% of gross revenues, the taxpayer must file its tax declaration on an accounts basis instead of on a deemed-profit basis.

**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.

Asset	Rate (%)
Buildings	4
Furniture and office tools	15
Drilling equipment	25
Electrical equipment and electronics	15
Tools and equipment	20
Computer and its accessories	33.3
Software	25
Trucks and trailers	15
Cars and buses	20

**Relief for losses.** Article 7 of the Bylaws provides that approved losses can be carried forward for a maximum of three years (as opposed to an unlimited period under the prior tax law) if the entity has not ceased its operations in Kuwait.

**Aggregation of income.** If a foreign company has more than one activity in Kuwait, one tax declaration aggregating the income from all activities is required.

#### D. Other significant taxes

The following table 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	7.5
Contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS);	

Nature of tax	Rate (%)
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 Kuwait Stock Exchange; Ministerial Resolution No. 24 of 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; 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
- 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 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.

**Subcontractors' costs.** The Kuwait tax authorities are normally stringent with respect to the allowance of subcontractors' costs, particularly subcontractors' costs incurred outside Kuwait. Subcontractors' costs are normally allowed if the taxpayer provides the

related supporting documentation (contract, invoices, settlement evidence and other documents), complies with the regulations for the 5% retention on the payments made to the subcontractors and the submission of the contracts to the DIT (see *Retention on payments to subcontractors*) and fulfills certain other conditions.

**Retention on payments to subcontractors.** Ministerial Order No. 44 of 1985 requires that every business entity operating in Kuwait must take the following actions:

- It must notify names and addresses of its contractors and subcontractors.
- It must submit copies of all the contracts and subcontracts to the DIT.
- It must retain 5% of the contract or subcontract values from the final payments due to the contractors or subcontractors until the contractor or subcontractor provides a valid tax-clearance certificate issued by the DIT.

In the event of noncompliance with the order, the DIT may disallow the related costs from the contract or subcontract.

The DIT further clarified the above requirements through Article 37 of the Bylaws, which provides the following:

- The retention must equal 5% of the contract value or of each installment paid.
- The DIT may fully disallow the costs if a company does not retain 5% or does not notify the DIT of its subcontractors.

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 apply from 1 October 2003. This requirement has been further emphasized through the new labor law issued in 2010. The DIT may disallow payroll costs if employees do not receive their salaries in their bank accounts in Kuwait.

**Offset program.** The MOF 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 MOF 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 MOF 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 MOF 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.

The National Offset Company (NOC) currently manages the Offset Program in Kuwait. The NOC expects the obligors to have equity participation in the projects approved under the Offset 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

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 except in the case of dividend income received by investors in companies listed on the Kuwait Stock Exchange (see Section B). As a result, it is not yet known how the Kuwaiti government will apply the withholding tax procedures related to interest and royalties 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
Greece	5 (c)	5 (c)	15
Hungary	0	0	10
India	10 (n)	10 (n)	10
Indonesia	10 (c)	5 (b)	20
Italy	5	0	10
Jordan	5 (c)	5 (b)	30
Korea (South)	5	5	15
Lebanon	0	0	30
Malaysia	0	10	15 (q)
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
South Africa	0	0	0
Sri Lanka	5/10	10	20
Sudan	5 (h)	5 (h)	10
Switzerland	15	10	10
Syria	0	10 (k)	20
Thailand	10	10/15 (o)	20
Tunisia	10 (c)	2.5 (b)	5
Turkey	10	10	10
Ukraine	5 (f)	0	10
United Kingdom	5/15 (e)	0	10
Venezuela	5/10 (p)	5	20
Yugoslavia	5/10 (l)	10	10
Nontreaty countries	15 (r)	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 capital of the company paying the dividends. 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 or 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.
- (n) Dividends or interest paid by a company that is a resident of a contracting state is not taxable in that contracting state if the beneficial owner of the dividends or interest is one of the following:
- The government
  - A political subdivision or a local authority of the other contracting state
  - The Central Bank of the other contracting state
  - Other governmental agencies or governmental financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the contracting states
- (o) The rate is 10% in the case of financial institutions (including insurance companies) and 15% in all other cases.
- (p) The rate is 5% 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. The rate is 10% in all other cases.
- (q) The rate is 15% for the use of, or the right to use, cinematographic films, tapes for radio or television broadcasting and copyrights of literary or artistic works. The rate is 10% for the right to use patents, trademarks, designs, models, plans, secret formulas or processes, copyrights of scientific works and industrial, commercial or scientific equipment.
- (r) This rate applies only to dividends distributed by companies listed on the Kuwait Stock Exchange (see Section B).

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## Laos

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**A. At a glance**

Corporate Income Tax Rate (%)	28 (a)
Capital Gains Tax (%)	– (b)
Branch Tax Rate (%)	28 (c)
Withholding Tax (%) (d)	
Dividends	10
Interest	10
Royalties	5
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) This tax is known as the “profit tax.” Reduced rates apply to foreign investors in certain circumstances under the Law on the Promotion of Foreign Investment. A minimum tax is imposed (see Section B).
- (b) The tax law does not provide for the taxation of capital gains derived from the transfer of tangible assets. Income from the sale of shares is subject to income tax at a rate of 10%.
- (c) Lao regulations do not contain a definition of a “permanent establishment.” A foreign company may establish a branch only in certain sectors of the economy. Only a foreign bank, financial institution, insurance company or airline company may establish a branch in Laos.
- (d) These are final withholding taxes that are imposed on Lao and foreign legal entities and individuals.

**B. Taxes on corporate income**

**Profit tax.** Companies and individuals engaged in manufacturing, trading and services are subject to profit tax on their Lao-source income. Foreign companies deriving income from Laos or entering into joint venture contracts with project owners in Laos are also subject to profit tax.

The accounts of a branch of a Lao company are consolidated with the accounts of the parent company for purposes of calculating profit tax.

**Rates of profit tax.** The standard rate of profit tax for business activities is 28%. As of 3 October 2011, the Lao government was discussing a further reduction in the tax rate from 28% to 26%, effective from 2012. However, no details have been provided.

Companies in certain industries, such as mining, are taxed at different rates, depending on their agreement with the government of Laos.

Foreign investors may be entitled to reduced rates of 20%, 15% or 10% in accordance with the Law on the Promotion of Foreign Investment. Profit tax exemptions may be granted for certain periods depending on the activities and location of the business.

Foreign enterprises registered under the Law on the Promotion of Foreign Investment pay profit tax in accordance with their agreements with the government.

**Minimum tax.** A minimum tax is levied on businesses or freelancers who pay profit tax according to the advanced or ordinary accounting system and have declared a loss or have profits below

the threshold set by the regulations. The minimum tax applies to both legal entities and individuals. An advanced accounting system is an accounting system that follows the accrual method, while an ordinary accounting system is an intermediate system between the accrual and cash systems. However, foreign or local investors that are in a tax-exemption period or companies that incur a loss or that have profits within the threshold set by the government, as certified by an audit organization or audit firm recognized by the government of Laos, are exempt from minimum tax. The following are the minimum tax rates:

- Domestic manufacturing activities: 0.25% of all business income excluding value-added tax (VAT) and/or business turnover tax (BTT)
- Commercial activities, services and freelancers: 1% of all business income excluding VAT and/or BTT

**Capital gains.** The law is silent on the taxation of capital gains arising from the transfer of tangible assets. However, income derived from sales of securities is subject to a withholding tax of 10%.

**Administration.** The normal fiscal year in Laos is the calendar year.

For companies and individuals using the advanced or ordinary accounting system, profit tax must be declared and paid quarterly on 10 April, 10 July and 10 October with a final payment due on 10 March of the following year. The quarterly payments are based on the final tax liability of the preceding year or the projected liability for the current year. Any excess payments may be credited against the final annual profit tax liability or future profit tax liability.

For companies or individuals using the basic accounting system, profit tax is declared and paid based on their agreements with the government.

The minimum tax is paid annually and must be declared on or before 1 March each year. The quarterly profit tax payments are credited against the minimum tax payable.

**Dividends.** A 10% withholding tax is imposed on dividends paid.

**Foreign tax relief.** Laos has entered into double tax treaties with five countries (see Section F).

### C. Determination of taxable business income

**General.** The calculation used to determine the taxable income of companies and individuals subject to profit tax depends on whether the taxpayers use the advanced, ordinary or basic accounting system. Taxpayers that use the advanced or ordinary accounting system may determine taxable income using either of the following calculations:

- The difference between the actual value of the assets at the close of the year and the value of those assets at the beginning of the year less capital contributed during the year plus personal drawings of the shareholders (this method is known as the “profit method”)
- Gross income less total authorized deductions

Companies and individuals using the basic accounting system determine their taxable business income by deducting their total authorized expenses from gross income. Alternatively, they may declare their gross annual profit if the difference between gross income and expenses cannot be calculated. Gross annual profit is equal to the annual income multiplied by the profit ratio for each type of activity.

Taxable income includes income from the following sources:

- Income from handicraft, agriculture and industry
- Income from the exploitation of natural resources
- Income from import and export business
- Income from banking, insurance and financial activities
- Income from tourism including hotels
- Income from lottery, casino and sports activities
- Income from the provision of general services

Deductions from gross income include the following:

- General business expenses such as electricity, telephone, advertising, repair charges, salaries and wages, welfare and social security expenses, rent, interest and insurance
- Depreciation (see *Depreciation*)
- Reserve funds for risks or unexpected expenses, amortization of intangible fixed assets, inventories and receivables

Expenses not related to business activities are not deductible. Other nondeductible expenses include the following:

- Profit and minimum tax
- Interest paid to shareholders on capital contributions
- Penalties or fines
- Donations and support funds, gifts and awards

**Inventories.** The law does not prescribe a basis for the valuation of inventory. Inventory for a tax year is valued at the lower of cost or market value.

**Depreciation.** Depreciation can be claimed based on the straight-line or declining-value method. In the year of acquisition or disposal, depreciation may be claimed for the portion of the asset that was put in use. The following are straight-line depreciation rates.

<b>Assets</b>	<b>Annual rate (%)</b>
Buildings	
Industrial	2.5 to 5
Commercial and residential	5 to 10
Plant and machinery	20
Motor vehicles	10
Office equipment	5

Establishment expenses are expensed over two years.

**Relief for losses.** Losses can be carried forward for a period of three consecutive years. Losses may not be carried back.

#### **D. Other significant taxes**

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Business turnover tax (BTT); imposed on sales and imports of goods and general services; certain goods and services are exempt from BTT, such as activities relating to banking, financial institutions, health insurance and life insurance, international transportation services, certain agricultural products and exports of services (As a result of the introduction of value-added tax [see below], effective from 1 January 2010, BTT applies only to small businesses.)	10
Value-added tax (VAT; effective from 1 January 2010); VAT applies to businesses with annual revenues exceeding LAK 400 million (US\$50,000) and businesses that voluntarily register for VAT; VAT is intended to replace BTT, but as a result of a lack of guidelines for the implementation of VAT, the taxes are being applied concurrently; businesses registered for VAT may offset BTT incurred on inputs in calculating VAT payable, but businesses registered for BTT may not offset VAT incurred on inputs in calculating BTT payable	
Imported, locally manufactured and consumed taxable goods, materials and services	10
Exported goods, materials and services	0
Tax on income from the lease of immovable property; payable by the recipient each time the income is received	15
Excise duty; on the import value of various commodities	
Fuel	5 to 25
Alcoholic drinks	50 to 70
Soft drinks and mineral water	10 to 30
Cigarettes and cigars	55
Perfume and cosmetics	30
Vehicles (including motorcycles)	10 to 90
Motorboats	10
Electrical products (televisions, cameras and musical instruments)	15
Refrigerators, washing machines and vacuum cleaners	10
Sport related (for example, snooker and football)	20
Entertainment (nightclub, disco and karaoke)	15
Mobile phone and Internet	10
Lottery and casino activities	10
Social Security contributions; imposed on salaries of up to LAK 1 million per month	
Employee	5
Employer	4.5

### E. Foreign-exchange controls

Laos does not impose any foreign-exchange controls. Foreign investors can freely repatriate their after-tax profits and capital to other countries, subject to certain substantiation requirements.

The currency of Laos is the kip (LAK). Bank accounts may be held in other currencies. The U.S. dollar and Thai baht are commonly used for bank payments between entities.

## F. Treaty withholding tax rates

	Dividends	Interest	Royalties
	%	%	%
China	5	5/10	5/10
Korea (South)	5/10	10	5
Malaysia	5/10	10	10
Thailand	15	10/15	15
Vietnam	10	10	10
Nontreaty countries	10	10	5

## Latvia

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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	0/5/10 (c)
Royalties	5/15 (d)
Management and Consulting Fees	0/10 (e)
Payments for the Use of Property	
Located in Latvia	5
Gains on Transfers of Real Estate or Shares of Real Estate Companies	
Located in Latvia	2 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	8

- (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 if, before the payment, the recipient of the dividends obtained from the tax authorities of its residence country and submitted to the dividend payer a certificate confirming the following:

- The company receiving the dividend is a tax resident of an EU or EEA country.
  - The income of the company receiving the dividends is subject to corporate income tax in the company's country of tax residence.
  - The company receiving the dividends is not treated as tax resident in a third country that is not a member of the EEA under a double tax treaty entered into with such third country.
- (c) The 0% rate applies to interest paid to unrelated parties. The 5% rate applies to the following interest payments:
- Interest paid by Latvian-registered banks to related parties.
  - Interest paid by Latvian companies to related legal entities resident in the EU or the EEA or their permanent establishments if, before the payment, the recipient of the interest has obtained from the tax authorities of its residence country and has submitted to the interest payer a certificate confirming the following:
    - The company receiving the interest is a tax resident of an EU or EEA country.
    - The income of the company receiving the interest is subject to corporate income tax in the company's country of tax residence.
    - The company receiving the interest is not treated as tax resident in a third country that is not a member of the EEA under a double tax treaty entered into with such third country.
- Two EU resident companies are considered related, if either of the following circumstances exists:
- One company owns at least 25% of the capital or voting rights in another company.
  - Another EU resident company holds 25% of the capital or voting rights of both companies.
- The 10% rate applies to other interest payments to related parties.
- (d) The 15% rate applies to copyright royalties. The 5% rate applies to copyright royalties paid to EU-resident related companies or their permanent establishments and to royalties on other types of intellectual property. To apply the 5% rate to copyright royalties paid to EU-resident related companies, the same conditions described in footnote (c) for a withholding tax rate of 5% on interest paid to such companies must be satisfied.
- (e) The 0% rate applies to management and consulting fees paid to residents of countries that have entered into double tax treaties with Latvia.
- (f) 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.** Companies 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, management and consulting services' fees and royalties paid to nonresidents.

Companies that invest more than LVL 5 million in supportable long-term investment projects may apply for the following corporate income tax rebates:

- 25% of the whole initial investment amount up to LVL 35 million
- 15% of the part of the whole initial investment amount that exceeds LVL 35 million

The Ministry of Economics of Latvia needs to agree to the above investment projects, and criteria specified in the Law on Corporate Income Tax for the granting of the tax benefits must be met.

**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 that is a resident of an EU or EEA country.

A resident company is not taxable on dividends received from a nonresident company that is not a resident of an EU or EEA country 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.
- 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 defined in the Credit Institution Law) as of the last month of the tax year (for 2010, 7% for loans in lats and 4.4% for loans in euros), 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:

$$C = \frac{D}{(E - R) \times 4}$$

- The following are the values of the items in the formula:
  - D = average liabilities.
  - E = total equity.
  - R = amounts in long-term revaluation reserve and similar reserves that have not resulted from profit distributions.

The thin-capitalization rules do not apply to interest on loans obtained from the following:

- Credit institutions that are residents of the EU, EEA or a country with which Latvia has entered into a double tax treaty
- Latvian Treasury
- Nordic Investment Bank
- European Bank for Reconstruction and Development
- European Investment Bank
- Council of Europe Development Bank
- World Bank Group

The second calculation described above for calculating the limitation on the interest deduction does not apply if the loans are obtained from financial institutions (as defined in the Credit Institution Law) that are resident in the EU, EEA or a country

with which Latvia has entered into a double tax treaty and if such financial institution provides crediting or financial leasing services and is under the supervision of credit institutions or the financial monitoring agency.

The thin-capitalization rules do not apply to credit institutions and insurance companies.

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 1.5 for 2012.

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. The costs related to establishment or acquisition of trademarks or patents registered in Latvia may be multiplied by 1.5 for tax amortization purposes under certain circumstances.

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.
- It is not an emergency vehicle.
- It is not a specialized automobile for disabled persons.
- It is not a promotion automobile.

**Relief for losses.** Losses may be carried forward eight 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
- 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. Additional conditions must be met.

## D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax on goods and services, including imports	
Standard rate	22
Medical services, and supplies of books and subscriptions	12
Exports	0
Social security contributions, paid by	
Employer	24.09
Employee	11
Property tax; applies to land, engineering structures and buildings, except for residential buildings	1.5
Property tax on residential buildings	
Cadastral value under LVL 40,000	0.2
Cadastral value between LVL 40,000 and LVL 75,000	0.4
Cadastral value above LVL 75,000	0.6

## 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 law provides that the arm's length principle must be followed in all related-party transactions. The Latvian tax authorities may redefine the transaction between related parties and recalculate the tax base if the prices applied in related-party transactions are not arm's length. 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 for Multinational Enterprises and Tax Administrations.

## F. Treaty withholding tax rates

The following table lists the rates under Latvia's tax treaties. The statutory rate applies if it is lower than the treaty rate.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Albania	5/10 (a)	5/10 (p)	5
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	5/15 (a)	10	5/10 (b)
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
Italy	5/15 (q)	10	5/10 (b)
Kazakhstan	5/15 (a)	10	10
Korea (South)	5/10 (a)	10	5/10 (b)
Kuwait (u)	0/5	5	5
Kyrgyzstan	5/10 (c)	10	5
Lithuania	0/15 (d)	0	0
Luxembourg	5/10 (a)	10	5/10 (b)
Macedonia	5	5	5/10 (l)
Malta	5/10 (a)	10	10
Moldova	10	10	10
Montenegro	5/10 (a)	10	5/10 (o)
Morocco	6/10 (r)	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	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)
Tajikistan	0/5/10 (s)	0/7 (t)	5/10 (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)	0/5/10 (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) For details, see footnote (c) in Section A.
- (f) For details, see footnote (d) in Section A.
- (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) No withholding tax is imposed on dividends paid by Latvian entities to legal entities resident in the EU or the EEA or their permanent establishments if all of the following conditions are satisfied:
- The company receiving the dividends has obtained an application confirming that it is tax resident in an EU or EEA country.
  - The income of the company receiving the dividends is subject to corporate income tax in the company's country of tax residence.
  - The company receiving the dividends is not treated as tax resident in a third country that is not a member of the EEA under a double tax treaty entered into with such third country.
- (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 of, 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 of, or the right to use, patents, trademarks, designs or models, plans, secret formulas or processes, or industrial, commercial or scientific equipment
  - Information concerning industrial, commercial or scientific experience
- (p) The 5% rate applies to interest paid on loans granted by banks.
- (q) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the voting capital of the company paying the dividends.
- (r) The 6% 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 company paying the dividends.
- (s) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 75% of the capital of the payer of the dividends. 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. The 10% rate applies to all other dividends.
- (t) The 0% rate applies to interest paid on loans granted by banks, or to the government, the central bank or any financial institution controlled by the government of Tajikistan.
- (u) Latvia has ratified the tax treaty with Kuwait, which will enter into force when Latvia receives notification that Kuwait has also ratified the treaty.

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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.
- 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.
- 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 5% of the tax due for each month or part of a month that the return is late. The minimum penalty is LL 750,000 for joint stock companies, LL 500,000 for limited liability companies, and LL 100,000 for other taxpayers. The maximum penalty is 100% of the tax due. For failure to pay tax by the due date, a penalty of 1.5% 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.
- Doubtful debts owed by debtors that have been declared legally bankrupt.
- A provision for obsolete inventory if the following conditions are met:
  - The tax authorities are notified about the intention to destroy the obsolete stock.
  - The obsolete stock is destroyed in the presence of a representative from the tax authorities.
  - The tax authorities prepare formal minutes evidencing the destruction of the obsolete stock.

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. Companies must notify the relevant income tax authorities of the adopted depreciation policy before the declaration deadline. Otherwise the company is considered eligible for the minimum depreciation rates only.

<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 handcrafts	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 following table summarizes other significant taxes.

Nature of tax	Rate
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
Social security contributions	
Sickness and maternity, on monthly salaries up to LL 1,500,000; paid by	
Employer	7%
Employee	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%

Nature of tax	Rate
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%
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 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.

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## 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 (%)	
Dividends	25 (b)(c)
Interest	25 (b)(d)(e)
Royalties	25 (b)(d)
Management Charges	25 (b)(d)
Payments for Services	10 (b)
Payments to Resident Contractors	5
Branch Remittance Tax	25 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) For manufacturing companies, the rate is 10%. For companies that manufacture and export outside the Southern African Customs Union, the rate is 0%.
- (b) These withholding taxes apply to payments to nonresidents only.
- (c) Dividends paid by manufacturing companies subject to a concessional corporate tax rate are exempt from withholding tax.
- (d) For interest, royalties and management charges paid by manufacturing companies subject to a concessional corporate tax rate, the rate is 15%.
- (e) A 10% withholding tax is imposed on interest paid to residents.
- (f) This tax is imposed on repatriated income. Repatriated income is the chargeable income of the branch less Lesotho income tax paid on the chargeable income and any profits reinvested in the branch.

**B. Taxes on corporate income and gains**

**Company tax.** Company tax is imposed on income from all sources located in and outside Lesotho.

**Rates of company tax.** The standard tax rate is 25%.

The rate is reduced to 10% for income from manufacturing operations and to 0% for companies that manufacture and export to countries outside the Southern African Customs Union. The special rate for manufacturing income does not apply to a Lesotho branch of a nonresident company.

**Capital gains.** Capital gains are treated as ordinary income and subject to tax at the regular corporate income tax rate.

**Administration.** The year of assessment runs from 1 April to 31 March. However, a company may select a year of assessment other than 1 April to 31 March, subject to the approval of the Commissioner of Income Tax.

Returns must be filed by the last day of the third month following the end of the year of assessment. If a return is not filed, the Commissioner may issue an estimated assessment.

Tax is payable in three installments, which are due on 30 September, 31 December and 31 March of each year of assessment. The fourth and final payment is due on submission of the return. For companies whose year-end is other than 31 March, the installments of tax are due on the last day of the sixth, ninth, and twelfth months of the year of assessment.

Withholding taxes are payable when the payee becomes legally entitled to the payment.

If tax levied under the Income Tax Act is not paid by the due date, additional tax of 3% compounded monthly is payable.

**Dividends.** Resident companies are exempt from tax on dividends received, but they may not deduct related expenses or dividends declared. A resident company is a company that satisfies one of the following conditions:

- It is incorporated and formed under the laws of Lesotho.
- Its management and control is located in Lesotho.
- It undertakes the majority of its operations in Lesotho.

Dividends paid to nonresidents are subject to a final withholding tax at a rate of 25%. Dividends paid by manufacturing companies subject to a concessionary corporate tax rate are exempt from withholding tax.

Resident companies that pay dividends are liable for advance corporation tax (ACT).

The following is the calculation for ACT:

$$\frac{A \times 100}{100 - A}$$

In the above calculation, A is the corporate tax rate for income other than manufacturing income.

Installment tax is set off against ACT; that is, installment tax paid settles the ACT due.

**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.

**Inventories.** Inventories are valued at the lower of cost or realizable value. Cost is determined using the first-in, first-out (FIFO) method.

**Provisions.** Specific provisions are allowable for tax purposes. General provisions are not allowed.

**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
Industrial buildings and public utility plant	5
Mining	100
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:

- Specified basic commodities: 0%
- Electricity and telecommunications: 5%
- Liquor: 15%
- Other commodities: 14%

#### E. Tax treaties

Lesotho has entered into tax treaties with Mauritius, South Africa and the United Kingdom. The following are the withholding tax rates for dividends, interest and royalties under these treaties.

	Dividends	Interest	Royalties	Management and technical fees
	%	%	%	%
Mauritius	10	10	10	0
South Africa	15	10	10	10
United Kingdom	10	10	10	10
Nontreaty countries*	25	25	25	25

\* See applicable footnotes in Section A.

## Libya

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*This chapter reflects the law in Libya as of the time of writing. In view of the current transition in Libya, the legislative situation is difficult to assess and may be subject to change. Consequently, readers should obtain updated information before engaging in transactions.*

**A. At a glance**

Corporate Income Tax Rate (%)	20 (a)
Capital Gains Tax Rate (%)	20 (a)(b)
Branch Tax Rate (%)	20 (a)
Withholding Tax (%)	
Dividends	0
Interest	5 (c)
Royalties	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (d)

- (a) Corporate income tax is imposed at a flat rate of 20%. In addition, Jihad Tax at a rate of 4% is imposed on the profits of Libyan companies and branches. Oil companies are subject to a composite rate of 65% which includes income tax, Jihad Tax and a surtax.
- (b) Capital gains are treated as trading income.
- (c) This tax is imposed on bank interest paid to residents and nonresidents. The Libyan law does not provide for any other withholding taxes.
- (d) Oil companies may carry forward losses 10 years.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Libyan companies and foreign branches are subject to tax on their worldwide income. A national company or foreign branch is considered to be resident in Libya if it is registered with the Secretariat of Economy. A foreign company that does not register but engages in activities in Libya is deemed to immediately have de facto permanent establishment status in Libya and is subject to tax on its income.

**Tax rates.** Corporate income tax is imposed at a flat rate of 20% of profits.

In addition, Jihad Tax is payable at a rate of 4% of profits.

Oil companies are subject to a composite rate of 65% which includes income tax, Jihad Tax and a surtax.

Companies established under Law 9/2010 (Investment Law) or Law 7/2003 (Tourism Law) are exempt from corporate taxes for up to 5 years and a possible additional 3 years or 10 years, respectively, as well as from stamp duty and import duties.

**Capital gains.** Capital gains are included in ordinary income and are taxed at the regular corporate income tax rate.

**Administration.** The financial year is the calendar year, but, on application, the Tax Department may allow a different financial year.

An annual tax return must be filed within one month after approval of the company or branch accounts or four months after the year end, whichever is earlier. Consequently, for companies using the calendar year as their financial year, tax returns must be filed by 30 April.

Tax is payable in four quarterly installments beginning with the first quarterly due date after the issuance of an assessment. The quarterly due dates are 10 March, 10 June, 10 September and 10 December.

**Dividends.** Dividends are not subject to tax in Libya.

**Royalties.** Subject to the provisions of double tax treaties, royalties are treated as trading income.

**Foreign tax relief.** Libya does not grant any relief for foreign taxes unless a double tax treaty applies.

### C. Determination of trading income

**General.** Taxable income is based on financial statements prepared in accordance with generally accepted accounting principles (GAAP), subject to certain adjustments. A body of Libyan GAAP does not exist.

Business expenses are generally deductible if incurred for business purposes unless specifically disallowed by the tax law.

**Deemed profit basis of assessment.** Notwithstanding the law, in practice, tax is assessed on private Libyan and foreign companies (joint stock companies and branches) based on a percentage of turnover. This is known as the “deemed profit” basis of assessment. Consequently, tax is payable even if losses are declared.

The percentage of deemed profit based on turnover varies according to the type of business activity. These percentages include the following:

- Civil works and contracting: 10% to 15%
- Oil service: 15% to 25%
- Design and consulting engineers: 25% to 40%

Each case is reviewed individually and a percentage is determined within the above broad ranges. After the preliminary final assessments are issued, taxpayers have a period of 45 days in which to negotiate an agreed settlement or to appeal. Thereafter, appeals may be made to the First and Second Appeal Committees, the Court of Appeal and finally the Supreme Court.

The deemed profit percentage applied to any year is higher than the profit percentage declared in the annual tax return.

The deemed profit basis of assessment does not apply to Libyan public companies, which are assessed on an actual basis.

**Inventories.** Inventories are valued at cost.

**Provisions.** General provisions are not allowed.

**Tax depreciation.** Depreciation must be computed using the straight-line method. The following are some of the standard depreciation rates allowed in Libya.

<b>Asset</b>	<b>Rate (%)</b>
Furniture and tools	10 to 20
Desert camp furniture	20
Passenger cars	20
Computer hardware	20
Computer software	10

Head office overhead charges are limited to 5% of expenses.

**Relief for losses.** In general, losses may be carried forward five years. However, oil companies may carry forward losses 10 years. Losses may not be carried back.

**Groups of companies.** Libyan law does not provide for the fiscal integration of related parties.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Social security contributions; on employee's annual salary; paid by Employer	11.25
Employee	3.75
Stamp duty; the Stamp Duty Law contains 45 schedules; the most relevant items for companies and branches are the duties to register contracts and subcontracts; customers do not pay invoices unless contracts are registered and duty paid; duty for registration is based on the contract value	
Contracts	1
Subcontracts	0.1
Import duties; imposed only on tobacco	10
Service charge on the value of imports; imposed to fund the administration of the Customs Department	10

#### E. Foreign-exchange controls

The Libyan currency is the dinar (LD).

Libyan branches of foreign companies may be paid directly offshore (up to 100%).

Libyan joint stock companies with a majority foreign shareholding (which may be up to 65%) may be paid in foreign currency but the payments must be made into accounts held at Libyan banks.

As a result, no issue exists with respect to the remittance of profits.

#### F. Tax treaties

Libya has entered into a multilateral tax treaty with the other Mahgreb Union countries (Algeria, Mauritania, Morocco and Tunisia). It has also entered into double tax treaties with Egypt, France, India, Malta, Pakistan, the Slovak Republic and the United Kingdom.

Libya has signed double tax treaties with many other Asian and European countries, but these treaties have not yet been ratified.

Libya has entered into a treaty of "Friendship and Co-Operation" with Italy.

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## Liechtenstein

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### A. At a glance

Corporate Income Tax Rate (%)	12.5 (a)
Capital Gains Tax Rate (%)	21 (b)
Branch Tax Rate (%)	12.5 (a)
Withholding Tax (%)	
Dividends	0 (c)
Interest	0
Royalties from Patents, Know-how, etc.	0
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The minimum corporate income tax is CHF 1,200 per year.  
 (b) This is the maximum rate. See Section B.  
 (c) Withholding tax at a rate of 4% (2% in 2011 and 2012) is levied on distributions of reserves existing on 31 December 2010. See Section B.

### B. Taxes on corporate income and gains

**Corporate income tax.** The current Liechtenstein tax law entered into force on 1 January 2011. It no longer contains provisions regarding special tax status (domiciliary company or holding company status). Certain tax favorable situations may result by applying deemed deductions to taxable income (see *Notional interest deduction* and *Patent box regime for intellectual property companies*). For existing domiciliary companies, a grandfathering of three years until 31 December 2013 applies. Consequently, such companies will temporarily benefit from tax exemption even though they may not meet the conditions for exemption under the new law.

Resident corporations carrying on activities in Liechtenstein are generally taxed on worldwide income other than income from foreign real estate. Income from permanent establishments abroad is exempt from income tax.

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.

**Rates of corporate tax.** Companies resident in Liechtenstein and foreign enterprises with permanent establishments in Liechtenstein are subject to income tax. The corporate income tax rate is 12.5%. The minimum corporate income tax burden is CHF 1,200 per year.

**Notional interest deduction.** Deemed interest on the equity of the taxpaying entity may be deducted from the taxable income. The applicable interest rate, which is specified annually, is currently 4%. The notional interest deduction may generate or increase a tax loss and accordingly increase the loss carryforward for tax purposes.

**Patent box regime for intellectual property companies.** Intellectual property (IP) companies may reduce taxable income by a deemed deduction of 80% on qualifying income from intellectual property (referred to as patent income). As a result of this regime, an effective tax burden of less than 2.5% may be feasible.

**Capital gains.** Capital gains, except those derived from the sales or liquidations of investments in shares or similar equity instruments and from the sales of real property, are included in income and subject to tax at the regular rate.

Capital gains derived from sales or liquidation of investments in shares or similar equity instruments are not taxed in Liechtenstein.

Real estate profits tax applies to capital gains from the sale of real property. The tax rate depends on the amount of taxable profit. The maximum rate is 21%.

**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.

**Dividends.** Dividends are not included in the taxable income of companies subject to tax.

Distributions of stock corporations (and other companies with capital divided into shares) are generally not subject to a withholding tax (the so-called coupon tax was abolished, effective from 1 January 2011). However, existing reserves that were not distributed as of 31 December 2010 (old reserves) remain subject to coupon tax according to the first-in, first-out principle. For the first two years after the date of entry into force of the new tax law, a favorable mechanism applies. Old reserves distributed in 2011 and 2012 are taxed at a rate of 2% while distributions of old reserves after 2012 will be subject to the previous rate of 4%.

### C. Determination of trading income

**General.** Taxable income is accounting income, subject to adjustments for tax purposes and excluding income from capital gains from sales of shares or similar equity instruments, dividends on investments in shares or similar equity instruments, foreign real property and income from permanent establishments located abroad.

Expenses related to the company's business are generally deductible. Taxes are not deductible.

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
- 35% for automobiles

**Relief for losses.** Losses may be carried forward to offset income for an unlimited number of years following the year of the loss. Losses may not be carried back.

**Groups of companies.** On request, associated companies (corporations) may form a group for tax purposes. Under group taxation, losses of group members may be credited against profits of other group members within the same year. To apply for group taxation, the following conditions, among others, must be met:

- The parent company must have its legal seat in Liechtenstein.
- The parent company must hold at least 50% of the voting rights and the capital of the subsidiaries as of the beginning of the respective year.

For purposes of group taxation, the subsidiaries in a group may be located in foreign countries.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax	
Standard rate	8
Hotels and lodging services (overnight stays only)	3.8
Basic necessities, such as food and medicine	2.5
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	4.9532
Employee	4.55

Nature of tax	Rate (%)
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 (yearly maximum, CHF 630)	0.5
Employee (yearly maximum, CHF 630)	0.5
Company pension fund, imposed on gross salary; minimum contribution (approximate rate, depending on plan); paid by	
Employer (approximate rate)	5
Employee (approximate rate)	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.

	Dividends %	Interest %	Royalties %
Austria	0 (a)	0	0
Hong Kong SAR	0 (a)	0	0
Luxembourg	0 (a)	0	0
San Marino	0 (a)	0	0
Uruguay (b)	0 (a)	0	0
Nontreaty countries	0 (a)	0	0

(a) Dividends distributed from reserves existing as of 31 December 2010 (old reserves) are subject to a withholding tax at a rate of 4% (2% for 2011 and 2012) unless the dividends are paid by legal entities that do not have their equity divided into quotas. Under certain conditions, full relief may be available under an applicable double tax treaty.

(b) The treaty is subject to ratification by both countries.

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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	0/10 (e)(f)
Royalties and Know-how	10 (e)
Sale, Rent or Other Transfer of Real Estate Located in Lithuania	15 (e)
Compensation for Violations of Copyrights or Related Rights	10 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5/Unlimited (g)

- (a) 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.

- (b) 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 a tax treaty country is exempt from tax if the shares have been held for at least two years and if the holding represents more than 25% of shares of the company throughout that period. This rule does not apply if the shares are sold to the issuer of the shares.
- (c) The withholding tax rates may be reduced by applicable tax treaties.
- (d) The dividend withholding tax is a final tax. Under the participation exemption rule, the rate is 0% if the recipient is a company (not located in a tax haven) that holds at least 10% of the shares of the payer of the dividends for a period of at least 12 months.
- (e) These withholding taxes apply to payments to nonresident companies.
- (f) Interest paid to an entity registered in an EEA country or in a tax treaty country is exempt from tax. In other cases, a 10% withholding tax is applied.
- (g) Losses from disposals of securities and derivative financial instruments may be carried forward five 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 in the current year. Other losses may be carried forward for an unlimited period, unless the entity ceases to carry on the activity that resulted in the loss. Also, see Section C.

## 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.

Profits of Lithuanian companies earned through permanent establishments in the EEA or in tax treaty countries are not taxed in Lithuania if the profit from activities carried out through these permanent establishments is subject to corporate income tax or equivalent tax in such countries.

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.
- It engages in the exploration or extraction of natural resources in Lithuania.

International telecommunication income and 50% of income derived from transportation that begins in Lithuania and ends in a foreign country or that begins in a foreign country and ends in Lithuania are considered to be income received through a permanent establishment if such activities relate to the activities of a foreign enterprise through a permanent establishment in Lithuania.

**Tax rates.** The standard profit tax rate is 15%.

A 5% rate applies to small entities with annual income not exceeding LTL 1 million 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 the following activities:

- Production
- Processing
- Storage
- Manufacturing of aircraft and spacecraft and related equipment
- Repair and maintenance of aircraft and spacecraft and services related to such activities
- Computer programming activities
- Computer consulting activities
- Management of computer equipment
- Other information technologies and computer services activities
- Data analytics
- Web servers (hosting) and related activities
- Call center activities
- Wholesale trade in goods stored in the zone and services related to such activities

Currently, free economic zones are located in Kaunas and Klaipeda.

Social enterprises, which have 40% or more employees included in target groups (for example, disabled individuals and long-term unemployed), are eligible for a 0% tax rate. In addition, the entity may not perform the activities included in the list of unsupported activities (for example, hunting, and alcohol and tobacco production) of social enterprises.

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 million, a 0% tax rate applies to the first LTL 25,000 of taxable profit. The remaining part of the taxable profit is subject to tax at a rate of 15%. Income received from activities carried out to satisfy public interests that is intended to be used for the funding of such activities is not considered income received from business activities of nonprofit entities.

Entities engaged in international transportation by ships or in a directly related activity can elect to be taxed on a special tax base related 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 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 an EEA country or in a tax treaty country is exempt from tax if the shares have been held for an uninterrupted period of at least two years and if the holding represents more than 25% of the shares of the company throughout that period.

The exemption mentioned above does not apply if the shares are transferred to the issuer of the shares.

Capital gains derived from the transfer of shares in a reorganization or from another transfer specified in the law is exempt from tax if the shares have been held for an uninterrupted period of at least three years and if the holding represents more than 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 profit tax returns with the tax inspectorate by the first day of the sixth month following the end 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. The law specifies two methods that companies may choose to calculate their advance profit tax. The chosen method must be applied consistently throughout the year, but it can be changed once in the tax year. The following are the specified methods:

- The results of prior financial years. The advance payments for the first nine months are calculated based on the profit tax for the year before the preceding year. Each of these advance payments equals 25% of the profit tax for such year. For the 10th through 12th months of the tax year, the advance payment equals 25% 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.

If companies choose to pay the advance profit tax based on the results of prior financial years, they must file two profit 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.

If the advance profit tax payment is based on the forecasted profit tax of the current year, the profit tax advance payment return must be filed by the last day of the first month of the tax year.

Newly registered enterprises in their first tax year and enterprises with taxable profit of less than LTL 1 million 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.** Withholding tax at a rate of 10% is imposed on the following types of payments to nonresident companies:

- Interest
- All types of royalties
- Compensation for violations of copyrights or ancillary rights

Interest paid to an entity registered in an EEA country or in a tax treaty country is exempt from tax.

Withholding tax at a rate of 15% is imposed on the following types of payments to nonresident companies:

- Dividends (for further details, see *Dividends*)
- Payments with respect to the sale, rent or other transfer of real estate located in Lithuania
- Payments for performance and sport activity in Lithuania
- Directors' fees for members of the supervisory board

**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 for the company receiving dividends by the withholding tax calculated on the dividends. 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 used to reduce the preceding year's tax may be set off against other taxes or refunded by the tax authorities. 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 rule, dividends are not subject to profit tax if the recipient is a company (not located in a tax haven) that holds at least 10% of the shares of the payer of the dividends for a period of at least 12 months. The participation exemption does not apply to dividends distributed to individuals from the following types of profit:

- Profits that were subject to a 0% tax rate
- Profits that were reduced by investment relief
- Profits that were not taxed because of specific exemptions indicated in the law

Dividends paid by foreign companies to Lithuanian companies are not subject to tax if the company paying the dividends is registered in an EEA country and if the company's profits were subject to corporate profit tax or an equivalent tax.

The participation exemption also applies to the following:

- Dividends that are attributed to the permanent establishment of a foreign company in Lithuania
- 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.

The exemption method is applied to profit from activities carried out through permanent establishments of Lithuanian entities in EEA countries or in tax treaty countries if profit from activities carried out through these permanent establishments is subject to corporate income tax or equivalent tax in such countries.

### C. Determination of taxable income

**General.** Taxable profit is equal to gross revenue, minus expenses incurred in earning such revenue.

Taxable income is calculated by taking the following actions:

- Subtracting nontaxable income (for example, after-tax dividends, revenues from the revaluation of fixed assets under certain circumstances and payments received from Lithuanian insurance companies up to the amount of incurred losses) from the accounting profit
- Taking into account nondeductible expenses and deductible expenses of a limited amount

Deductions are allowed if they are incurred during the usual business activity and are necessary to earn revenues or obtain economic benefits, provided that documentary evidence is presented.

Expenses that may be deducted up to certain limits include, among others, the following:

- Depreciation and amortization
- Business trip expenses
- Representation expenses
- Provisions for bad debts

A double deduction is allowed for sponsorship payments (except payments in cash exceeding LTL 32,500 to a single sponsorship recipient), up to a maximum deduction equal to 40% of the taxable profit.

A triple deduction is allowed for research and development (R&D) costs if the scientific R&D activities are related to the usual or intended activities of the entity that generate or will generate income or economic benefits.

Nondeductible amounts include dividends and costs that are incurred outside of the usual business operations or that are inappropriately documented.

Payments to tax havens may be deducted only if the Lithuanian enterprise can prove that certain conditions evidencing the economic basis of the transaction were met.

Other taxes (for example, social insurance contributions and real estate tax) may be deducted from taxable income.

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.** To calculate tax depreciation, companies may select the straight-line method, double-declining value method or production method. The selected depreciation method must be applied for all assets of the same type. To change the depreciation method, companies must obtain the approval of the local tax authorities.

Under the straight-line method, depreciation is claimed each year in equal portions. Under the double-declining value method, the depreciation or amortization coefficient is calculated by multiplying the straight-line rate by two. For the purpose of calculating the amount of depreciation or amortization for the tax period during the first year, the acquisition price of long-term assets is multiplied by the depreciation coefficient. To calculate the depreciation or amortization of long-term assets during the other years, except for the last year, the residual value of long-term assets at the beginning of the tax year is multiplied by the depreciation coefficient. Under the production method, depreciation is calculated based on the number of units produced over the asset's useful life.

Accelerated depreciation may be claimed for assets used in R&D activities. 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>R&amp;D Minimum period for depreciation Years</b>	<b>Other Minimum period for depreciation Years</b>
Intangible assets	2 to 15	3 to 15
Buildings and premises		
Constructed or reconstructed on or after 1 January 2002	8	8
Constructed or reconstructed before 1 January 2002	15 to 20	15 to 20
Plant and machinery	2 to 15	5 to 15
Computers	2	3
Vehicles	4 to 10	4 to 10
Other assets	2	4

**Relief for research and development works.** In the calculation of profit tax, three times the amount of R&D expenses, except for depreciation or amortization costs of fixed assets, may be deducted from income in the corresponding tax year. Fixed assets that are used for R&D may be depreciated or amortized applying accelerated depreciation (amortization) rates.

**Relief for investment projects.** The taxable profit of a Lithuanian entity may be reduced by up to 50% by the amount of expenses that are incurred in the acquisition of fixed assets used in an

“investment project.” For this purpose, an “investment project” is investment in certain categories of fixed assets (machinery, equipment, information technology hardware and software, and acquired intellectual property rights), required for the manufacturing or supply of new products (or services), increasing production volume, the implementation of a new process of production (or supply of services), essential changes to an existing process (or part of the process) and the implementation of new technologies that are protected by international patent law. This relief may be applied in the 2009 through 2013 tax years, and the balance of unused relief may be carried forward for four years.

**Relief for losses.** Losses, except losses resulting from disposals of securities and derivative financial instruments, may be carried forward for an unlimited period. The carryforward of such losses is no longer allowed if the activity that resulted in the loss ceases. Loss resulting from disposals of securities and derivative financial instruments may be carried forward for five years.

For a reorganization or transfer, the acquiring entity may carry forward the acquired losses, except for losses of entities (nonfinancial institutions) resulting from the disposal of securities and derivatives, incurred before the completion of the reorganization or transfer if the acquiring entity continues to carry on the activity taken over or a part of such activity for a period of at least three years.

**Groups of enterprises.** Corporations are taxed separately in Lithuania. Consolidated returns are not allowed. The transfer between group entities of tax losses incurred in the 2010 tax year and subsequent tax years is allowed. Certain conditions apply.

## D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax; intra-EU supplies and exports are zero-rated	0/5/9/21
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); maximum rate	1
Social security tax; paid by	
Employer	27.98
Employee	3
Health insurance contributions; paid by	
Employer	3
Employee	6

Other significant taxes include excise duty, 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 that had revenues exceeding LTL 10 million for the tax year preceding the tax year during which transactions with related parties are undertaken 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 following table 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
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
Korea (South)	5/10 (a)	10	5/10 (b)

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Latvia	0/15 (h)	0	0
Luxembourg	5/15 (a)	10	5/10 (b)
Macedonia	0/10 (k)	10	10
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)
Serbia	5/10 (i)	10	10
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\$100,000.
- (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.
- (k) The 0% rate applies if the recipient owns at least 10% of the authorized capital of the payer.
- (l) The 5% rate applies if the recipient owns at least 25% of the authorized capital of the payer.

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**A. At a glance**

Corporate Income Tax Rate (%)	21 (a)
Capital Gains Tax Rate (%)	21 (a)
Branch Tax Rate (%)	21 (a)
Withholding Tax (%)	
Dividends	0/15 (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) A 15% dividend withholding tax is imposed on payments to resident and nonresidents. Under Luxembourg domestic law, a full withholding tax exemption applies to dividends if they are paid to qualifying entities established in European Union (EU)/European Economic Area (EEA) member states, Switzerland or a country with which Luxembourg has entered into a double tax treaty and if certain conditions are met (see Sections B and F).
- (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 central administration 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 companies 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.

**Tax rates.** Corporate income tax rates range from 20% to 21%, depending on the income level. In addition, a surcharge of 5% 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 28.80%. The following is a sample 2012 tax calculation for a company in Luxembourg City.

Profit	€100.00
Corporate income tax at 21%	(21.00)
Unemployment fund surcharge at 5%	(1.05)
Municipal business tax	(6.75)
	<u>€71.20</u>
Total income taxes	<u>€28.80</u>
As percentage of profit	<u>28.80%</u>

**Luxembourg investment vehicles.** Luxembourg offers a large number of investment vehicles (companies and funds) that can be used for tax-efficient structuring.

Luxembourg Undertakings for Collective Investment in Transferable Securities (UCITs) are subject to an annual subscription tax (*taxe d'abonnement*) of 0.05%, levied on their total net asset value, unless a reduced rate or an exemption applies. For the rates of the subscription tax, see Section D. Distributions made by UCITs are not subject to withholding tax.

Investment vehicles offered in Luxembourg are described below.

*Specialized Investment Funds.* 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
- Any other type of investor who has declared in writing that he or she 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 or she 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. Amendments to the SIF Law covering items, such as the authorization process, delegation, risk management, conflict of interest and cross investment between compartments of SIFs, are effective from 1 April 2012.

An exemption for corporate income tax, municipal business tax and net worth tax applies to investment funds in the form of an SIF. These funds are subject only to a subscription tax at an annual rate of 0.01% calculated on the quarterly net asset value of the fund, unless an exemption regime applies (for example, investments in funds already subject to the subscription tax, certain money market funds and pension pooling vehicle funds). Distributions by SIFs are not subject to withholding tax, except possibly on application of the EU Savings Directive.

Certain double tax treaties signed by Luxembourg apply to an SIF incorporated as an investment company with variable capital (*société d'investissement à capital variable*, or SICAV) or an investment company with fixed capital (*société d'investissement à capital fixe*, or SICAF). In general, an SIF constituted as a common fund (*fonds commun de placement*, or FCP) does not benefit from double tax treaties.

*Venture capital companies.* A venture capital company (*société d'investissement en capital à risque*, or SICAR) can be set up under a transparent tax regime as a limited partnership or under a nontransparent tax regime as a corporate company. SICARs are approved and supervised by the Commission for the Supervision of the Financial Sector, but they are subject to few restrictions. They may have a flexible investment policy with no diversification rules or leverage restrictions. SICARs in the form of a corporation benefit from a partial objective exemption regime for income from securities under which losses on disposals and value adjustments made against such investments are not deductible from taxable profits. In addition, SICARs are exempt from subscription tax and net worth tax. For corporations, a dividend withholding tax exemption regime applies.

*Securitization companies.* A securitization company can take the form of a regulated investment fund or a company (which, depending on its activities, may or may not be regulated). Securitization companies are available for securitization transactions in the broadest sense and are not subject to net worth tax. They are subject to corporate income tax and municipal business tax. However, commitments to investors (dividend and interest payments) are deductible from the tax base. Distributions of proceeds are qualified as interest payments for Luxembourg income tax purposes and are consequently not subject to withholding tax, except possibly on application of the EU Savings Directive if the securitization company is an FCP.

*Private Asset Management Companies.* The purpose of a Private Asset Management Company (*Société de Gestion de Patrimoine Familial*, or SPF) is the management of private wealth of individuals without carrying out an economic activity. SPFs are subject to subscription tax levied at a rate of 0.25% with a minimum amount of €100 and a maximum amount of €125,000. An exemption for corporate income tax, municipal business tax and net worth tax applies.

SPFs may not benefit from double tax treaties entered into by Luxembourg or from the EU Parent-Subsidiary Directive. Dividend and interest income arising from financial assets may be subject to withholding tax in the state of source in accordance with the domestic tax law of that state. Until 31 December 2011, the favorable tax status for SPFs was lost for any year in which the vehicle received 5% or more of its dividend income from participations in unlisted and nonresident companies that were not subject to a tax similar to Luxembourg corporate income tax. Under the amended law, effective from 1 January 2012, this restriction is removed. Dividend distributions to shareholders are not subject to Luxembourg withholding tax. Interest payments are exempt from withholding tax unless the recipient is a Luxembourg resident individual or the EU Savings Directive applies (see *Interest*).

*Holding companies.* Holding companies (*sociétés de participations financières*, or SOPARFI) are fully taxable Luxembourg resident companies that take advantage of the participation exemption regime. They may benefit from double tax treaties signed by Luxembourg as well as the provisions of the EU Parent-Subsidiary Directive. For information regarding debt-to-equity rules, see Section E. A SOPARFI can be set up as a public com-

pany limited by shares (*société anonyme*), limited company (*société à responsabilité limitée*) or a partnership limited by shares (*société en commandite par actions*, or SCA). Loss-making qualifying holding companies are subject to a minimum tax of €1,575 including the unemployment surcharge. Companies in a tax consolidation suffer this tax only once at the level of the top consolidating entity.

**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. However, capital gains on the sale of shares 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 EU state and is covered by Article 2 of the EU Parent-Subsidiary Directive.
  - A Luxembourg permanent establishment of a capital company resident in a state with which Luxembourg has entered into a tax treaty.
  - A Luxembourg permanent establishment of a capital company or cooperative company resident in an EEA state other than an EU state.
- The shares have been held for 12 months or the shareholder commits itself to hold its remaining minimum shareholding in order to 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 EU 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 may be 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 these time limits, an interest charge of 0.6% per month may be assessed.

Luxembourg has introduced a partial self-assessment procedure that is optional for the authorities. This procedure allows the authorities to release tax assessments without verifying the filed tax returns, while keeping a right of verification within a statute of limitations period of five years. In practice, the self-assessment primarily applies to companies having a holding activity.

**Dividends.** Dividends received by resident companies are generally taxable. However, 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 EU Parent-Subsidiary Directive.
  - A Luxembourg permanent establishment of a capital company resident in a state with which Luxembourg has entered into a tax treaty.
  - A Luxembourg permanent establishment of a capital company or cooperative company resident in an EEA state other than an EU state.
- 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 hold the minimum participation for the required period.

Dividends received from nonresident companies are fully exempt from tax if the above conditions are met and if either of the following applies:

- The distributing entity is a capital company subject to a tax comparable to Luxembourg corporate income tax of at least 10.5%.
- The distributing entity is resident in another EU member state and is covered by Article 2 of the EU 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.

On the distribution of dividends, as a general rule, 15% of the gross amount must be withheld at source; 17.65% of the net dividend must be withheld if the withholding tax is not charged to the recipient. No dividend withholding tax is due if one of the following conditions is met:

- 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 minimum 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 EU 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 EU Parent-Subsidiary Directive.
  - It is a company resident in a state with which Luxembourg has entered into a tax treaty and is subject to a tax comparable to the Luxembourg corporate income tax of at least 10.5%, or it is a Luxembourg permanent establishment of such a company.
  - It is a company resident in an EEA member state and is subject to a tax comparable to the Luxembourg corporate income tax of at least 10.5%, or it is a Luxembourg permanent establishment of such a company.
- A more favorable rate is provided by a tax treaty.
- The distributing company is an investment fund, an SIF, an SPF, an SICAR or a securitization company.

**Interest.** According to the EU Savings Directive as implemented in the law, interest payments made by Luxembourg payers to beneficial owners who are individuals resident in other EU member states or to certain residual entities (defined as paying agents on receipt 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 35%.

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. The 10% final tax has been 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 corporate 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).

**Accounting rules.** International Financial Reporting Standards (IFRS), as adopted by the EU, were introduced in Luxembourg in 2010. Undertakings may apply the IFRS provisions to financial years that remained open on the date of entry into force of this law. However, a tax balance sheet is required to avoid the taxation of unrealized gains.

A new chart of accounts and an electronic filing requirement for the trial balance for statistical purposes became mandatory in Luxembourg for certain entities for fiscal years beginning after December 2010.

The Luxembourg Central Bank issued regulations on the collection of statistical information for Luxembourg finance companies. The first reports were due to be transmitted in October 2011.

**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, under certain conditions, 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 the straight-line method are 10% for plant and machinery, 20% for office equipment and 25% for motor vehicles. The declining-balance depreciation rates may be as high as 3 times the straight-line depreciation rate without exceeding 30% (4 times and 40% for equipment exclusively used for research and development).

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.

**Special tax depreciation for investments in clean technology.** Businesses making eligible investments aimed at protecting the environment and providing for rational use of energy may elect an accelerated tax amortization of 80% of the depreciation base.

**Intellectual property.** Income, royalties and capital gains derived by resident corporate entities or Luxembourg permanent establishments of nonresident companies from certain intellectual property (IP) rights acquired or developed after 31 December 2007, except those acquired from an associated company, benefit from

a partial tax exemption of 80% of the net income arising from the use of, or the right to use, the IP rights. A loss remains fully deductible for tax purposes but it is recaptured in the year in which a gain is derived on the sale of IP. A notional deduction of 80% for the use of a self-developed patent by a company for its own activity is also granted. Capital gains derived from the disposal of qualifying IP rights also benefit from the exemption regime. In addition to the partial exemption from income taxes, qualifying IP rights also benefit from a full net worth tax exemption in Luxembourg.

### **Tax credits**

*General investment tax credit.* A tax credit of 13% is granted for additional investments in qualifying assets. Qualifying assets consist of depreciable tangible fixed assets other than buildings physically used in EU member states, Iceland, Liechtenstein and Norway (EEA). Certain assets are excluded from the additional tax credit in the year of their acquisition, such as motor vehicles, assets that have a useful life of less than three years and second-hand assets. In addition, a 7% credit is granted for qualifying new investments up to €150,000 and a 3% credit is granted for investments over that amount. If investments are made to create jobs for disabled persons, these rates are increased to 8% and 4%, respectively. Investments may qualify for both credits.

*Tax credit for ecological equipment.* The rates for the general investment tax credit (see *General investment tax credit*) are increased from 7% to 8% and from 3% to 4% for certain investments intended to protect the environment.

The above credits reduce corporate income tax and may be carried forward for 10 years.

*Tax credit for professional training.* Ten percent of training costs can be offset against corporate income tax under certain conditions.

*Tax credit for hiring of unemployed.* Fifteen percent of the annual gross salary paid to persons who were unemployed can be offset against corporate income tax under certain conditions. This regime is extended until 31 December 2014.

*Tax credit for audiovisual or venture capital investments.* Eligible projects may qualify for a corporate income tax credit of 30% of the nominal amount of so-called audiovisual or venture capital certificates, limited to a maximum credit of 30% of taxable income. The benefit from both regimes cannot be cumulated. The regime for audiovisual investment certificates, which is in effect until 2015, is granted to Luxembourg resident corporations and cooperative companies and applies to projects realized in the EU.

**Relief for losses.** Trading losses, adjusted for tax purposes, incurred in or after 1991 may be carried forward without a time limitation. Losses may not be carried back.

**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 or a tax-transparent entity.

#### 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 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 qualifying participations (at least 10% of the capital of qualifying domestic or foreign subsidiaries) that are held directly or through a qualifying fiscally transparent entity; net worth tax may be reduced up to the amount of corporate income tax (including the contribution to the unemployment fund and before deduction of tax credits) by creation of a net worth tax reserve that must be maintained for five years in the accounts	0.5
Subscription tax ( <i>taxe d'abonnement</i> ), annual tax on the value of a company's shares; rate depends on type of company	
Société de Gestion de Patrimoine Familial (SPFs)	0.25
Investment funds	
Certain funds of funds, certain institutional monetary funds, Pension Fund Pooling Vehicles (PFPVs), microfinance UCIs and Exchange Traded Funds	0
Specialized Investment Funds (SIFs), dedicated funds (funds owned exclusively by institutional investors), institutional compartments of funds, monetary funds and cash funds, on the condition that the exemption regime does not apply	0.01
Other funds	0.05
Social security contributions on salaries (2012 rates); paid by	
Employer (including health at work contribution and accident insurance but excluding mutual insurance)	12.31
Employee (including care insurance)	12.45
Additional rate for blue-collar workers only	1
Payroll taxes, for accident insurance; paid by employer (2012 rate)	1.15
Health at work contribution, on salaries; paid by employer (2012 rate)	0.11

Nature of tax	Rate (%)
Care insurance on gross employment income; paid by employee (2012 rate)	1.4
Mutual insurance (2012 rates); paid by employer	0.48 to 2.74

## E. Miscellaneous matters

**Foreign-exchange controls.** Luxembourg does not impose transfer restrictions. The Banque Centrale de Luxembourg (BCL) and the Service Central de la Statistique et des Etudes Économiques (the national statistical institute of Luxembourg) monitor the transfer of funds. Effective from 1 January 2012, this obligation is transferred to the companies themselves on a monthly basis. The new reporting obligation also applies to selected companies in the nonfinancial sector that, based on previous activity, are expected to realize large volumes of transactions, mainly services, with foreign counterparts.

**Debt-to-equity rules.** The Luxembourg tax law does not contain any specific thin-capitalization rules. In principle, borrowed money that is 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. Since 2011, guidance formalizing transfer-pricing rules for intragroup financing activities applies in Luxembourg. To obtain a binding tax clearance from the authorities, it is now required that such companies have a minimum equity of at least 1% of the loans granted, with a cap of €2 million, and that they have available a transfer-pricing study incorporating Organization for Economic Cooperation and Development (OECD) standards. The companies must further meet the required substance criteria in Luxembourg. A grandfather period to comply with this guidance ended on 31 December 2011.

**Chamber of Commerce fee.** Membership in the Chamber of Commerce, which requires an annual membership fee, is mandatory for all commercial companies having their legal seat in Luxembourg and for Luxembourg branches of foreign companies. Effective from 2010, the fee ranges from 0.025% to 0.20%, depending on the taxable profit of the company, before loss carry-forwards, as provided by the Luxembourg income tax law. The fee is assessed on the basis of the taxable profit realized two years before the year the contribution is due. For companies in a loss situation, partnerships and limited companies (*société à responsabilité limitée*) must make a minimum contribution of €70, while other corporations must make a minimum annual contribution of €140. Companies that mainly perform a holding activity and that are listed as such in the Statistical Classification of

Economic Activities in the European Community (Nomenclature statistique des activités économiques dans la communauté européenne, or NACE) Code must pay a lump-sum fee of €350.

**Special tax regime for expatriate highly skilled employees.** The provisions of the beneficial income tax regime for expatriates apply to assignments or recruitments made after 1 January 2011. If the employer meets certain conditions, the tax regime can apply to employees who are sent to work temporarily in Luxembourg on an assignment between intragroup entities and to employees who are directly recruited abroad by a Luxembourg company to work temporarily in Luxembourg. Under the tax regime, tax relief is provided for certain costs related to expatriation if several conditions are met.

**Limitation of corporate tax deductibility of “golden handshakes.”** To limit excessive “golden handshakes” to departing employees, voluntary departure indemnities or dismissal indemnities above €300,000 are not tax-deductible for employers. Tax rules at the level of the employee remain fully applicable. A fractioned payment that is made over several years is deemed to be a single payment.

**Islamic finance.** The Luxembourg tax administration provides guidance covering the Luxembourg tax treatment of some contracts and transactions with respect to Islamic finance. This clarifies the revenue repatriation mechanism of Luxembourg’s Sharia-compliant financing instruments as well as structuring capacities.

**VAT free zone.** In 2011, Luxembourg introduced a temporary exemption regime for VAT purposes. This regime provides a VAT suspension system for transactions concerning goods stored in specific locations.

## F. Treaty withholding tax rates

The rates reflect the lower of the treaty rate and the rate under Luxembourg domestic tax law. Dividend distributions to companies resident in a treaty country are covered by the Luxembourg participation exemption regime. As a result, a full exemption from Luxembourg dividend withholding tax may apply if certain conditions are met (see Section B).

	Dividends	Interest (m)	Royalties
	%	%	%
Armenia	0/5/15 (s)	0	0
Austria	0/5/15 (a)(d)	0	0
Azerbaijan	0/5/10 (n)	0	0
Bahrain	0/10 (g)	0	0
Barbados	0/15 (l)	0	0
Belgium	0/10/15 (c)(d)	0	0
Brazil	0/15/25 (g)	0	0
Bulgaria	0/5/15 (a)(d)	0	0
Canada	0/5/15 (h)	0	0
China	0/5/10 (a)	0	0
Czechoslovakia (e)	0/5/15 (a)(d)	0	0
Denmark	0/5/15 (a)(d)	0	0
Estonia	0/5/15 (a)(d)	0	0
Finland	0/5/15 (a)(d)	0	0
France	0/5/15 (a)(d)	0	0

	<b>Dividends</b>	<b>Interest (m)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Georgia	0/5/10 (o)	0	0
Germany	0/10/15 (d)(y)	0	0
Greece	0/7.5 (d)	0	0
Hong Kong	0/10 (q)	0	0
Hungary	0/5/15 (a)(d)	0	0
Iceland	0/5/15 (a)	0	0
India	0/10	0	0
Indonesia	0/10/15 (a)	0	0
Ireland	0/5/15 (a)(d)	0	0
Israel	0/5/10/15 (u)	0	0
Italy	0/15 (d)	0	0
Japan	0/5/15 (v)	0	0
Korea (South)	0/10/15 (a)	0	0
Latvia	0/5/10 (a)(d)	0	0
Liechtenstein	0/5/15 (r)	0	0
Lithuania	0/5/15 (a)(d)	0	0
Malaysia	0/5/10 (g)	0	0
Malta	0/5/15 (a)(d)	0	0
Mauritius	0/5/10 (g)	0	0
Mexico	0/5/15 (g)	0	0
Moldova	0/5/10 (t)	0	0
Monaco	0/5/15 (s)	0	0
Mongolia	0/5/15 (k)	0	0
Morocco	0/10/15 (a)	0	0
Netherlands	0/2.5/15 (a)(d)	0	0
Norway	0/5/15 (a)	0	0
Panama	0/5/15 (x)	0	0
Poland	0/5/15 (a)(d)	0	0
Portugal	0/15 (d)	0	0
Qatar	0/5/10 (p)	0	0
Romania	0/5/15 (a)(d)	0	0
Russian Federation	0/10/15 (j)	0	0
San Marino	0/15 (l)	0	0
Singapore	0/5/10 (g)	0	0
Slovak Republic	0/5/15 (a)(d)	0	0
Slovenia	0/5/15 (a)(d)	0	0
South Africa	0/5/15 (a)	0	0
Spain	0/5/15 (a)(d)	0	0
Sweden	0/15 (d)(w)	0	0
Switzerland	0/5/15 (f)	0	0
Thailand	0/5/15 (a)	0	0
Trinidad and Tobago	0/5/10 (g)	0	0
Tunisia	0/10	0	0
Turkey	0/5/20 (a)	0	0
United Arab Emirates	0/5/10 (g)	0	0
United Kingdom	0/5/15 (a)(d)	0	0
United States	0/5/15 (b)	0	0
Uzbekistan	0/5/15 (a)	0	0
Vietnam	0/5/10/15 (i)	0	0
Nontreaty countries	0/15 (d)	0	0

(a) The 5% rate (Netherlands, 2.5%; Belgium, Indonesia, Korea (South), and Morocco, 10%) applies if the recipient company holds at least 25% 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 €1,200,000 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 25% 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.
  - 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. In November 2011, Luxembourg and the Russian Federation signed an amending protocol to the existing double tax treaty between the countries. After the protocol enters into force, the withholding tax rate will be reduced to 5% for qualifying dividends if the receiving company holds at least 10% of the capital and if it has invested €80,000 (or equivalent in rubles) in the distributing company.
- (k) The 0% rate applies if the recipient company holds at least 25% of the payer for a continuous period of 12 months before the decision to distribute 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 before the decision to distribute 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) The lower rate applies if the recipient company holds directly or indirectly at least 30% of the paying company's capital and if the value of its investment in the paying company is at least US\$300,000 at the payment date.
- (o) The 0% 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 and that has invested more than €2 million in Georgia. The 5% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 10% of the capital of the payer and that has invested more than €100,000 in Georgia. The 10% rate applies to other dividends.
- (p) The 0% rate applies if the recipient company holds at least 10% of the payer. The 5% rate applies to individuals who own directly at least 10% of the capital of the company paying the dividends and who have been residents of the other country for at least 48 months preceding the year in which the dividends were paid.

- (q) The lower rate applies if the recipient of the dividends holds directly at least 10% of the shares in the payer or if it acquired the shares in the payer for a price of at least €1.2 million.
- (r) Withholding tax is not imposed on dividends distributed to a parent company if the recipient of the dividends holds directly at least 10% of the payer or if it acquired the shares in the payer for a price of at least €1.2 million and has held the shares for at least one year. 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.
- (s) The 5% rate applies if the recipient company holds at least 10% of the payer. The 15% rate applies to other dividends.
- (t) The 5% rate applies if the recipient company holds at least 20% of the payer. The 15% rate applies to other dividends.
- (u) The 5% rate applies if the recipient company holds at least 10% of the payer. The 10% rate applies if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends and if the payer company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal rate of Israeli company tax.
- (v) The 5% rate applies if the recipient company holds at least 25% of the payer of the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
- (w) 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 payment of the dividend.
- (x) The 5% rate applies if the beneficial owner is a company that holds directly at least 10% of the shares.
- (y) The 10% rate applies if the recipient company holds at least 25% of the capital in the distributing company. After the new double tax treaty signed in April 2012 enters into force, it will reduce the withholding tax on qualifying dividends to 5% if the beneficial owner is a company holding at least 10% of the capital in the distributing company. In other cases, the 15% rate applies, including dividends arising from real estate companies that benefit from a full or partial tax exemption or that treat distributions as tax deductible. SICAVs, SICAFs, SICARs and qualifying FCPs will be in the scope of the new DTT and may benefit from the withholding tax regime.

Luxembourg has signed tax treaties with Albania, Kazakhstan, Kuwait and Tajikistan, but these treaties have not yet entered into force.

Following treaty negotiations, treaty drafts have been initiated with Cyprus, Kyrgyzstan, Macedonia, Oman, Saudi Arabia, Seychelles, Sri Lanka and Ukraine.

Tax treaty negotiations with Lebanon, Montenegro, Pakistan, Serbia, Syria, the United Kingdom and Uruguay are underway.

Since 2009, Luxembourg has signed numerous new treaties or treaty amendments with other countries. As a result, Luxembourg complies with Organization for Economic Cooperation and Development (OECD) standards with respect to information exchange between tax authorities and reinforces international fiscal cooperation against tax fraud.

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## Macau Special Administrative Region (SAR) of China

(Country code 853)

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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 (d)
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 except for service fees paid to individuals. Under certain circumstances, interest or royalties received by nonresidents from Macau may be regarded as income from commercial or industrial activities in Macau and taxed at the normal corporate income tax rates.
- (d) Dividends are not taxable if they are distributed by entities that have paid corporate income tax at the corporate level on the distributed income.

### 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 complementary tax. 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.** The Macau Complementary Tax Law does not distinguish between a “capital gain” and “revenue profit.” 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 Services Bureau 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 with respect to the preceding year. The tax returns must be certified by local accountants or auditors registered with the Macau Finance Services Bureau.

Group A companies may carry forward losses to offset taxable profits in the following three years.

*Group B.* All companies that are not Group A companies are classified as Group B taxpayers.

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 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*) may claim deductions for dividends declared out of current-year profits. Under such circumstances, 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 signed complementary tax return, subject to adjustments required by the tax law. Group B companies are taxed on a deemed profit basis.

To be deductible, expenses must be incurred in the production of taxable profits. Certain specific expenses are not allowed, such as life insurance and fines. The deduction of provisions is restricted.

**Inventories.** Inventories are normally valued at the lower of cost or net realizable value. Cost can be determined using the weighted average 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
- 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 Services Bureau. The following are the maximum straight-line depreciation rates in Macau.

<b>Asset</b>	<b>Maximum 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
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
Patents	10
Other assets	Various

**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 following table summarizes other significant taxes.

Nature of tax	Rate
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 Services Bureau; 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	10%
Other property	6%
Stamp duty, on selling price or assessable value of transferred property; payable by purchaser	1% to 3% (plus 5% surcharge)
Special stamp duty, on transaction price; payable by transferor of residential property; subject to exemptions under certain special circumstances	
Property acquired by the vendor on or after 14 June 2011 and sold within one year after acquisition	20%
Property acquired by the vendor on or after 14 June 2011 and sold in the second year after acquisition	10%
Excise tax, on imported value and/or volume of certain items, such as alcoholic drinks and tobacco	
Drinks containing more than 30% of alcohol in terms of volume	
On imported value	10%
On volume	MOP 20 per liter
Tobacco	
Cigarettes	MOP 0.2 per cigarette
Other tobacco	MOP 80 to MOP 280 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	

Nature of tax	Rate
Employers for resident employees	MOP 30
Resident employees	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 double tax treaties with Mainland China, Mozambique and Portugal. Macau has also signed tax treaties with Belgium and Cape Verde, but these treaties are not yet in force.

Macau has entered into tax information exchange agreements with Australia, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden.

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## Macedonia, Former Yugoslav Republic of

(Country code 389)

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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.*

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**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 and Know-how	10
Fees for Management, Consulting, Financial, Research and Development Services	10
Rent and Payments under Leases of Immovable Property	10
Insurance Premiums	10
Payments for Telecommunication Services	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	0

\* Resident companies and permanent establishments of nonresident companies are not subject to tax on their income. They are subject only to tax at a rate of 10% on dividends and certain other payments made by them. For further details, see Section B.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Resident companies and permanent establishments of nonresident companies registered with the Macedonian authorities are not subject to tax on their income. They are subject to tax on the following items only:

- Dividends paid to foreign legal entities or to resident or non-resident individuals.
- Fringe benefits.
- Gifts.
- Distribution of profits in any form (for example, overpricing by related parties on supplies of goods or services).
- Expenses not recognized for tax purposes, such as transfer-pricing and thin-capitalization adjustments, provisions and other add-backs, reduced by the amount of annual tax deductions. The amount of nondeductible expenses is subject to tax after deduction of the amounts that qualified for tax deduction (non-tax-deductible balance of accounting depreciation brought forward from the previous year and provisions that have materialized in the current year).

Nonresident companies without a registered permanent establishment in Macedonia are subject to tax on their business income derived from local sources.

**Rate of corporate income tax.** The corporate income tax rate is 10%.

Companies are exempt from income tax for the first 10 years of their activities in a technological industrial development zone, subject to the conditions and procedures established in the Law on Technological Industrial Development Zones.

**Capital gains and losses.** Capital gains derived by resident companies and permanent establishments of nonresident companies registered with the Macedonian authorities are exempt from tax until

they are distributed. In all other cases, capital gains are not subject to tax.

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

Companies must make advance monthly payments of corporate income tax by the 15th day of each month. The tax base for the monthly payments equals  $1/12$  of the nondeductible expenses (payments subject to income tax) incurred in the preceding year adjusted by the percentage of the cumulative growth of retail prices in the country in the preceding year.

Companies must file annual tax returns by 28 February of the year following the tax year. Filing of monthly tax returns is not required. If the tax determined in an annual tax return is more than the amount of advance tax paid, the company must pay the difference within 30 days after the filing due date. Any overpaid amount must be refunded within 30 days following the request of the taxpayer.

On the distribution of profits, companies must file a tax return calculating the tax on the distributed profits. The tax on distributed profits is paid at the same time as the distribution of profits.

**Dividends.** Like other income, dividends received are exempt from tax until they are distributed to either a foreign legal entity or to resident or nonresident individuals. Dividends paid to foreign companies are subject to withholding tax at a rate of 10% on the net amount of the distributed dividends (that is, after deduction of the 10% corporate tax), unless tax treaty relief applies.

Dividends distributed to resident companies are exempt from profit tax.

**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% profit tax imposed in Macedonia on the foreign-source income. Foreign income tax is credited against the annual Macedonian tax imposed on any profit adjustments made in the same year, even though the tax base is different. Any tax credit balance cannot be carried forward. Exceptionally, foreign tax on dividends and permanent establishments' profits is credited against domestic tax on profit distributions. Macedonian companies holding at least 25% of the capital of foreign companies uninterruptedly for one year are also eligible for a tax credit equal to the underlying corporate tax.

### C. Determination of trading income

**General.** Companies pay income tax on payments made that are considered nondeductible expenses and on profit distributions.

**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.** Effective from April 2011, provisions booked for current liabilities are deductible for tax purposes. Provisions taxed in prior years as nondeductible expenses may be deducted in the year in which such liability materializes. The amount is deducted from the total amount of expenses that are not deductible for tax

purposes in the year in which the liability becomes definite. Any credit balance remaining is carried forward to the following five consecutive years and is deducted from nondeductible expenses for such years.

Write-offs of receivables for which no final court decision on their noncollectibility has been issued are not deductible for tax purposes. Written-off receivables taxed in prior years as nondeductible expenses are deducted from the total amount of expenses that are not deductible for tax purposes in the year in which the receivables are collected or in which the final court decision of their noncollectibility is published. Any credit balance remaining is carried forward to the following five consecutive years and deducted from the nondeductible expenses for such years.

**Tax depreciation.** Effective from April 2011, tax depreciation follows the accounting depreciation of tangible and intangible assets. The excess amount of the accounting depreciation not recognized for tax purposes taxed in prior years is deductible from the nondeductible expenses in the following years in which such differences become deductible for tax purposes. Depreciation not recognized for tax purposes in prior years is carried forward to be deducted from expenses that are not deductible for tax purposes in 2011 and in the following five financial years.

**Relief for losses.** Losses may not be carried forward or carried back.

**Groups of companies.** Group registration is not permitted under the Macedonian Profit Tax Code.

#### D. Other significant taxes

The following table 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 21.775 to MKD 24.396 per liter

Nature of tax	Rate
Diesel D-1 (petrol for use in motor cars)	MKD 12.264 per liter
Heating oil	MKD 3.230 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>Taxes contained in Property Tax Law</b>	
Property tax; annual tax on owners of immovable property, including nonrural 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; tax return must be filed within 15 days after the transfer of the property	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; tax return must be filed within 15 days after the transfer of the property	
Individuals in first line of heritage	0%
Individuals in second line of heritage	2% to 3%
All others	4% to 5%

## E. Miscellaneous matters

**Foreign-exchange controls.** The currency in Macedonia is the denar (MKD). All transactions in Macedonia 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
- Opening bank accounts abroad

**Transfer pricing.** Macedonia has transfer-pricing rules. Under these rules, the tax authorities may adjust the taxable income of taxpayers derived from transactions with related companies if they deem prices paid (or charged) to related companies for various types of items to be excessive. In such circumstances, the difference between prices stated in financial statements and arm's length prices is subject to tax.

**Debt-to-equity ratios.** Under thin-capitalization rules, interest on loans received from shareholders owning at least 25% of the capital of the borrower or on loans guaranteed by such shareholders is subject to tax to the extent that such interest corresponds to the excess of the loan balance over three times the shareholders' share in the equity of the borrower.

Effective from April 2011, the thin-capitalization restrictions apply only to loans provided by direct shareholders that are non-residents. In addition, the 25% participation threshold is alternatively measured by reference to voting rights. Loans provided from financial institutions are excluded from the thin-capitalization restrictions. Newly established entities are excluded in their first three years of operations.

## F. Treaty withholding tax rates

	Dividends	Interest	Royalties
	%	%	%
Albania	10	10	10
Austria	0/15 (i)	0	0
Belarus	5/15 (a)	10	10
Belgium	10/15 (a)	15	10
Bulgaria	5/15 (a)	0/10 (b)	10
China	5	0/10 (c)	10
Croatia	5/15 (a)	0/10 (e)	10
Czech Republic	5/15 (a)	0	10
Denmark	0/5/15 (f)	0	10
Egypt (w)	10	10	10
Estonia	0/5 (a)	0/5 (k)	5
Finland	0/15 (g)	0/10 (h)	0
France	0/15 (d)	0	0
Germany	5/15 (q)	0/5 (z)	5
Hungary	5/15 (a)	0	0
Iran (w)	10	10	10
Ireland	0/5/10 (r)	0	0
Italy	5/15 (a)	0/10 (j)	0
Latvia (w)	5/10 (q)	0/5 (t)	5/10 (u)
Lithuania	0/10 (i)	0/10 (e)	10
Moldova	5/10 (a)	5	10
Netherlands	0/15 (i)	0	0
Norway (w)	0/10/15 (x)	0/5 (y)	5
Poland	5/15 (a)	0/10 (k)	10
Qatar	0	0	5
Romania	5	0/10 (l)	10
Russian Federation	10	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Serbia and Montenegro	5/15 (a)	10	10
Slovak Republic	5	10	10
Slovenia	5/15 (a)	10	10
Spain	5/15 (q)	0/5 (p)	5
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	0/5/15 (v)	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, a municipality, the central bank or an agency fully owned and controlled by the government or a municipality (debts indirectly financed by the government, a local authority or the central bank).
- (d) The 0% rate applies if the recipient of the dividend is a company that holds directly or indirectly at least 10% of the equity of the payer of the dividends.
- (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 and if such holding is maintained for an uninterrupted period of at least one year and the dividends are declared within that period.
- (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 0% 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 SWEDCORP, Swedfund International AB, the Swedish Export Credits Guarantee Board or any other public institution with the objective of promoting exports or development.
  - 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 if the beneficial owner of the dividends owns at least 25% of the equity of the payer of the dividends for the entire 12-month period ending on the date of payment of the dividend or if the beneficial owner of the dividends is a pension scheme. The 5% rate applies if the beneficial owner of the dividends is a company that holds at least 10% of the voting power of the payer of the dividends.
- (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.
- (u) The higher rate applies to royalties paid for the use of, or the right to use, movies or tapes for radio and television broadcasting.
- (v) The 0% rate applies if the beneficial owner of the dividends owns at least 25% of the equity of the payer of the dividends for the entire 12-month period ending on the date of payment of the dividend or if the beneficial owner of the dividends is a pension scheme. The 5% 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.
- (w) This treaty is not yet in force.
- (x) The 0% rate applies if the beneficial owner of the dividends is the Central Bank of Norway, the government pension plan of Norway or Norfund or, in case of Macedonia, the Central Bank of Macedonia. The 10% 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.
- (y) The 0% rate applies to the following:
- Interest paid to the government of a contracting state, a political subdivision or local authority thereof, the central bank of a contracting state or an institution wholly owned by the government of a contracting state
  - Interest paid on a loan insured or guaranteed by a governmental institution for the purpose of promoting exports
  - Interest paid with respect to the sale on credit of industrial, commercial or scientific equipment
- (z) The 0% rate applies to the following:
- Interest paid with respect to the sale of commercial or scientific equipment on credit
  - Interest paid with respect to the sale of goods by an enterprise to another enterprise on credit
  - Interest paid on a loan guaranteed by the Federal Republic of Germany with respect to the export of foreign direct investment
  - Interest paid to the government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau, the Deutsche Investitions- und Entwicklungsgesellschaft or the Macedonian government.

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## Madagascar

(Country code 261)

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**A. At a glance**

Corporate Income Tax Rate (%)	21
Capital Gains Tax Rate (%)	21
Branch Tax Rate (%)	21
Withholding Tax (%)	
Dividends	0 (a)
Interest	21 (b)
Royalties	10 (c)
Other Nonsalary Payments	10/21 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The withholding tax on dividends was repealed in 2008. However, withholding tax on dividends continues to apply to certain entities (see Section B).
- (b) This withholding tax applies to resident and nonresident companies and individuals.
- (c) This withholding tax applies to nonresident companies.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Resident companies deriving taxable income from activities carried out in Madagascar are subject to corporate income tax. Resident companies are companies incorporated in Madagascar, which include subsidiaries and branches of foreign companies.

**Tax rates.** The standard corporate income tax rate is 21%.

In general, the minimum tax is MGA 100,000 plus 0.5% of annual turnover (including capital gains) for companies carrying out the following activities:

- Agricultural
- Craft
- Mining
- Industrial
- Tourism
- Transport

This minimum tax equals 0.1% of annual turnover for fuel station filling companies. For companies engaged in other activities, the minimum tax is MGA 320,000 plus 0.5% of annual turnover.

The minimum tax applies if the company incurs a loss or if the corporate income tax calculated using the 21% rate is less than the minimum tax to be paid as stated above.

*Free zones' companies.* Free zones' companies 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.

*Large mining investments.* Mining companies making investments over US\$25 million can benefit from legal and tax incentives if they are eligible under a special law called Loi sur les Grands Investissements Miniers (LGIM). They are exempt from

minimum tax for five years from the beginning of exploitation. The corporate income tax rates are 10% for owners of mining permits and 25% for the transformation entities.

**Capital gains.** Capital gains are included in taxable income and subject to the corporate income tax rate of 21%.

**Administration.** The standard tax year is the calendar year. However, companies may select a tax year running from 1 July to 30 June or another tax year.

Companies using the standard tax year must file financial statements and the corporate income tax return with the Malagasy tax authorities by 15 May of the year following the tax year. For companies choosing a tax year end other than the standard tax year end, the filing must be made within four months after the year-end. Companies must make six installments of corporate income tax for each tax year. Each payment must equal one-sixth of the preceding year's tax amount. The installments are payable by 15 February, 15 April, 15 June, 15 August, 15 October and 15 December.

Before engaging in activities in Madagascar, an entity must apply for tax registration by completing a specified form during the company creation procedure. The tax registration for wholesalers requires a special authorization from the head of the tax authority (Finance Minister or Tax Managing Director). A tax identification card is issued to a new taxpayer on the completion of registration.

The tax identification card must be renewed every year at the time of submission of the corporate income tax return.

Taxpayers that compute taxable income under the actual or simplified actual regime must open a bank account in their name.

Financial statements provided to private or public entities require the visa or certification of the tax authority.

**Dividends.** The withholding tax on dividends was repealed in 2008. However, a 21% withholding tax continues to apply to dividends paid by companies that are subject to special tax rules.

Dividends received by companies are subject to corporate income tax.

**Withholding income tax.** All payments made to nonresident service suppliers are subject to withholding income tax at a rate of 10%, regardless of whether the service is rendered inside or outside Madagascar. This is a final tax.

### **C. Determination of trading income**

**General.** Taxable income is based on financial statements prepared according to the Chart of Account or the Plan Comptable Général (PCG 2005), which conforms to the International Financial Reporting Standards (IFRS' 2003 version) and International Accounting Standards (IAS).

Business operating 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 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 through the use of the weighted-average cost-price method or the first-in, first-out 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.

Asset	Rate (%)
Commercial and industrial buildings	5
Office equipment	10
Motor vehicles	15
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.

**Tax credit.** The 2012 Finance Act introduced a tax credit equal to 50% of the amount invested by entities engaged in renewable energy production and distribution activities. The credit is annually capped to 50% of the amount of corporate income tax. The excess amount may be carried forward without time limitation, subject to the above limit of 50%.

**Relief for 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.

Nature of tax	Rate (%)
Value-added tax (VAT); on goods sold and services rendered in Madagascar; entities that have annual turnover of less than MGA 200 million (approximately US\$100,000) are not liable to VAT unless they voluntarily apply for the VAT regime; under the 2011 Finance Act, materials and equipment for the production of renewable	

Nature of tax	Rate (%)
energy are exempt from VAT; cash payments made between entities liable to VAT are forbidden; only payments by bank check, wire transfer, credit card and nonendorsed bill of exchange are allowed	
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 (The occupying or use of movable or immovable property must be supported by a lease agreement. This implies that registration fees at a rate of 2% are imposed on the total amount of rent during the lease agreement period.)	Various
Social security contributions	
For family allowances; on gross monthly remuneration; amount of remuneration subject to contributions is limited based on the minimum salary provided by decree	
Employer	13
Employee	1
For illness and pregnancy; on gross monthly remuneration, which is not limited	
Employer	5
Employee	1

### E. Foreign-exchange controls

The currency in Madagascar is the ariary (MGA).

Exchange-control regulations exist in Madagascar. For foreign-exchange control purposes, the two kinds of operations are current operations and capital operations.

Current operations include transfers abroad of profits after payments of taxes, dividends, earned income, expatriate allowances and savings. Current operations require only a transfer declaration to a local bank.

Capital operations include operations relating to stock transfers, shares of liquidation bonuses, sales of businesses or assets and compensation for expropriations. Capital operations involving transfers abroad require an authorization from the Ministry of Finance.

Madagascar is a member of the South African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA).

### F. Treaty withholding tax rates

	Dividends %	Interest %	Royalties %
France	0	15	10/15
Mauritius	0	10	5
Nontreaty countries	0	10	10*

\* This withholding tax applies to nonresident companies.

# Malawi

(Country code 265)

Malawi landline and mobile phone numbers are not preceded by a city code. When dialing these numbers from within Malawi, a zero must be added as a prefix.

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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	15 (e)
Payments for Services	20
Payments for Casual Labor Exceeding K 12,000	20
Fees	10 (e)
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%.

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.

**Minimum tax on turnover.** Minimum tax based on turnover is effective from the 2011-12 tax year. For annual turnover of up to K 50 million, minimum tax is levied at a rate of 1% of turnover. Tax at a rate of 2% of turnover is levied on gross revenue exceeding K 50 million. The amount payable is the higher of minimum tax and tax payable based on the taxable profit reported by the company.

**Capital gains and losses.** Pending enactment of the Capital Gains Tax Act, 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
- 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 by the 25th day of the month following 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.

Under a self-assessment system, taxpayers are responsible for calculating their tax liability and submitting tax returns together with any outstanding tax due. The Malawi Revenue Authority accepts the return as filed and does not issue any administrative assessments. If it is not satisfied, it will undertake to verify the correctness of the information contained in the return.

**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 following table 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.

Payment	Withholding tax rate (%)
Bank interest exceeding K 10,000	20
Royalties	20
Rent	15
Payments for supplies to traders and institutions	3
Fees	10
Commissions	20
Payments for carriage and haulage	10
Payments for sales of tobacco and other products	3
Payments to contractors and subcontractors in the building and construction industry	4
Payments for public entertainment	20
Payments of over K 12,000 for casual labor	20
Payments for services	20

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*).

**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 a 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
- 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 limited to K 9,000 per employee per year.

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 in 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
- 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 40% of the cost of new or unused industrial buildings and plant or machinery that is used by the company for manufacturing. The rate is 20% 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	33½

*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 million, the rate is 2.5%. For farm improvements, industrial buildings and railway lines, the rate of the annual allowance is 5%. 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 40%, 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*) 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 special tax allowances, which are described below.

*Export allowance.* An allowance equal to 15% of taxable income from export proceeds is granted with respect to sales of goods that are classified as nontraditional exports. The Commissioner General has issued a directive providing that the export allowance should be calculated on "taxable" export proceeds less export-related expenses. This remains an area of controversy with much debate surrounding the interpretation of the meaning of "taxable income." Tea, tobacco, sugar and coffee do not qualify for this allowance.

*International transport allowance.* An allowance equal to 15% of the international transport costs with respect to nontraditional exports may be claimed. Tea, tobacco, sugar and coffee do not qualify for this 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 following table 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	16.5%
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 1,175
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 120,000 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 valued over US\$50,000 require the prior approval of the Reserve Bank of Malawi. Commercial banks in Malawi are authorized to provide approvals of imports of lesser value.
- 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
- Renewal of Business Residence Permit
- Renewal of professional business licenses and permits of medical practitioners, dentists, legal practitioners (lawyers), engineers and architects who are engaged in a private practice or in partnership with another private practitioner
- Renewal of a certificate of registration under the National Construction Industry Act
- Transfer of a company as a going concern
- Externalization of funds to nonresident service providers whose source is deemed to be Malawi
- Renewal of temporary employment permits, business licenses, tourism licenses, telecommunications licenses and energy licenses
- Renewal, extension or transfer of mining licenses, or transfers of mineral rights by the ministry responsible for energy and natural resources
- Change of ownership of company
- Renewal of registration of public transport conveyances by the Road Traffic Directorate

**Transfer pricing.** Under a new section in the Taxation Act, if a person not resident in Malawi carries on business with a person resident in Malawi and if in the course of such business it is arranged that the business produce for the person resident in Malawi either no profits or less profit than might be expected had no such relationship existed, the profits of the resident person from that business are deemed to be the amount that might have been expected to accrue if the business had been conducted by independent persons.

## 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. The treaties with Denmark and Kenya are not operational. The treaties vary in the definition of “exempt income.”

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**A. At a glance**

Corporate Income Tax Rate (%)	25 (a)
Real Property Gains Tax Rate (%)	10 (b)
Branch Tax Rate (%)	25 (a)
Withholding Tax (%)	
Dividends	0
Interest	15 (c)(d)
Royalties from Patents, Know-how, etc.	10 (c)
Distributions by Real Estate	
Investment Trusts and Property Trust Funds	25 (e)
Payments to Nonresident Contractors	13 (f)
Payments for Specified Services and Use of Movable Property	10 (g)
Other Income	10 (h)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (i)

- (a) Resident companies that have paid-up ordinary capital of RM 2,500,000 or less and that satisfy specified conditions are taxed at a rate of 20% on their first RM 500,000 of chargeable income. The balance is taxed at 25%. These rates do not apply to petroleum companies, which are taxed at a rate of 38%.
- (b) Real property gains tax is imposed on gains derived from disposals of real property or shares in real property companies (see Section B).
- (c) This is a final tax applicable only to payments to nonresidents.
- (d) 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 Islamic securities is exempt from tax.
- (e) 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 individuals, trust bodies and other noncorporate unit holders are subject to withholding tax at a rate of 10%.
- (f) This withholding tax is treated as a prepayment of tax on account of the final tax liability.

- (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 made by Malaysian shipping companies for the use of ships under voyage charter, time charter or bare-boat charter. The rate is reduced under certain tax treaties.
- (h) Withholding tax is imposed on "other income," which includes, among other payments, commissions and guarantee fees.
- (i) See Section C.

## 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 25%. Resident companies that have paid-up ordinary capital of RM 2,500,000 or less are taxed at a rate of 20% on the first RM 500,000 of chargeable income. The balance is taxed at 25%. This concessionary tax rate does not apply if the company controls or is controlled directly or indirectly by another company that has paid-up ordinary capital of more than RM 2,500,000.

Special rates apply to nonresident companies on income from interest (15%) and from royalties, specified services rendered in Malaysia and payments for the use of movable property (10%). Rental payments for ships made by Malaysian shipping companies for voyage charter, time charter or bare-boat charter are exempt from withholding tax. Withholding tax (10%) is imposed on "other income" derived by nonresident companies from Malaysia, which includes, among other payments, commissions and guarantee fees, to the extent that these payments are not business income to the recipient. 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 a rate of 38% instead of the above rates.

**Tax incentives.** Malaysia offers a wide range of incentives such as tax holidays or investment allowances, which are granted to promote investments in selected industry sectors and/or promoted areas. Currently, the focus is on the service sectors.

**Labuan international business and financial center.** In 1990, the Malaysian government enacted legislation that created a business and financial center on the island of Labuan with a separate and distinct tax and regulatory regime.

Except for companies intending to engage in banking, insurance or the provision of fund management services, government approval is not required to establish a Labuan company. A Labuan 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.

Labuan companies may transact business with Malaysian residents and may hold shares, debt obligations or other securities in

domestic companies if such holding is not a controlling interest in the domestic company.

Labuan companies are subject to tax at a rate of 3% on their net audited profits derived from their trading activities in Labuan.

Labuan trading activities include banking, insurance, trading, management, licensing and other business activities. Instead of paying tax at the 3% rate, Labuan companies may elect to pay a fixed annual tax of RM 20,000. Income derived from nontrading activities, such as dividends, interest and rent, is exempt from tax.

Labuan 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. Labuan companies are exempt from the obligation to withhold tax on payments made to nonresidents.

Labuan 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.

**Real property gains tax.** Real property gains tax is levied on capital gains derived from disposals of real property located in Malaysia and shares in closely controlled companies with substantial real property interests. The tax applies to gains derived by residents and nonresidents. The following are the rates, effective from 1 January 2012.

Time of disposal	Rate (%)
Disposal within 2 years after the acquisition date	10
Disposal in the 3rd, 4th or 5th years after the acquisition date	5
Disposal in the 6th or subsequent year after the acquisition date	0

Purchasers of real property located in Malaysia or shares in real property companies must withhold tax at a rate of 2% of the purchase price. Losses incurred on disposals of real property and shares in real property companies may be carried forward indefinitely to offset future real property gains.

**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 12 equal monthly installments by the 10th day of each month beginning in the second month of the accounting period. Companies that have paid-up ordinary capital of RM 2,500,000 or less and 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.** Effective from the 2008 year of assessment, a single-tier system of taxation replaces the full imputation system. Under the single-tier system, dividends paid, credited or distributed by a company are exempt from tax 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 during the transitional period, 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 franked dividend distribution to its 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:

- Participation at approved trade fairs, exhibitions or trade missions
- Maintenance of overseas trade offices
- 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 on industrial buildings is fully written off in the 30th 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%. Qualifying capital expenditure on noncommercial vehicles is restricted to RM 100,000 per vehicle if the vehicle is new and if the total cost of the vehicle does not exceed RM 150,000. Qualifying capital expenditure is 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 80% 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 tax-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. Under an administrative concession, the tax authorities have decided not to enforce the shareholding test except in the case of dormant companies. As a result, unused losses may continue to be carried forward indefinitely even if a substantial change in shareholders occurs.

Losses arising in the 2009 or 2010 years of assessment may be carried back for offset against the defined aggregate income of the immediately preceding year. The losses allowed to be carried back are capped at RM 100,000 or the defined aggregate income of the immediately preceding year, whichever is less.

**Groups of companies.** Under group relief provisions, 70% 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 2,500,000.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Sales tax; imposed on certain taxable goods imported into Malaysia for home consumption and on certain goods manufactured locally when sold, disposed of or used by the manufacturer; general rates (specific rates apply to certain petroleum products)	5/10
Service tax; imposed on the provision of certain prescribed taxable services by prescribed taxable persons	6

#### 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 borrowings are within permitted limits. However, no limits are imposed on loans in foreign currency by nonresident parent companies to resident companies or on loans in foreign currency by nonresident suppliers to resident companies to finance purchases from the nonresident suppliers.

**Foreign-equity restrictions.** Foreign-equity restrictions have recently been liberalized. As a result, no restrictions are imposed on the ownership of most companies except those in certain regulated industries.

**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.

Specific measures in the tax law address transfer-pricing and thin-capitalization adjustments. However, the implementation of the

thin-capitalization rules has been deferred indefinitely. The specific measures allow the tax authorities to make pricing adjustments on transactions carried out between associated enterprises based on the arm's length principles. In addition, companies carrying out cross-border transactions with associated persons may apply for an advance pricing arrangement (APA) from the tax authorities.

## F. Treaty withholding tax rates

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

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Albania	—	10	10
Australia	—	15	10 (d)
Austria	—	15	10
Bahrain	—	5	8 (d)
Bangladesh	—	15	10 (d)
Belgium	—	10	10
Bosnia- Herzegovina (c)	—	10	8
Brunei Darussalam	—	10	10
Canada	—	15	10 (d)
Chile	—	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	—	10	7 (d)
Hungary	—	15	10
India	—	10	10 (d)
Indonesia	—	15	10
Iran	—	15	10
Ireland	—	10	8
Italy	—	15	10
Japan	—	10	10
Jordan	—	15	10
Kazakhstan	—	10	10
Korea (South)	—	15	10
Kuwait	—	10	10
Kyrgyzstan	—	10	10
Lebanon	—	10	8
Luxembourg	—	10	8
Malta	—	15	10
Mauritius	—	15	10
Mongolia	—	10	10
Morocco	—	10	10
Myanmar	—	10	10
Namibia	—	10	5 (d)
Netherlands	—	10	8 (d)
New Zealand	—	15	10 (d)
Norway	—	15	10 (d)
Pakistan	—	15	10 (d)

	Dividends (a)	Interest (b)	Royalties
	%	%	%
Papua New Guinea	—	15	10
Philippines	—	15	10 (d)
Poland	—	15	10 (d)
Qatar	—	5	8
Romania	—	15	10 (d)
San Marino	—	10	10
Saudi Arabia	—	5	8
Senegal (c)	—	10	10
Seychelles	—	10	10
Singapore	—	10	8
South Africa	—	10	5
Spain	—	10	7
Sri Lanka	—	10	10 (e)
Sudan	—	10	10
Sweden	—	10	8 (d)
Switzerland	—	10	10 (d)
Syria	—	10	10
Taiwan (g)	—	10	10
Thailand	—	15	10 (d)
Turkey	—	15	10
Turkmenistan	—	10	10
USSR (f)	—	15	10 (d)
United Arab Emirates	—	5	10
United Kingdom	—	10	8 (d)
Uzbekistan	—	10	10
Venezuela	—	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 and the United States.

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**A. At a glance**

Corporate Income Tax Rate (%)	0
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	0
Withholding Tax (%)	10*

\* The 10% withholding tax is imposed on payments made to persons not resident in the Maldives. These payments include the following:

- Management fees
- Fees for technical services
- Fees for the use of computer software
- Payments for performances by public entertainers
- Rents paid for the viewing of cinematographic films in the Maldives
- Royalties and rents paid for the use of plant, machinery, equipment or property
- Payments for carrying on research and development
- Other commissions or fees

**B. Taxes on corporate income and gains**

Although a tax specifically applicable to corporate profits does not currently apply, a tax of 15% is imposed on the business profits of any “person” deemed to be carrying on a business. A “person” includes, but is not limited to, corporations, partnerships and individuals. The taxable profits or losses of a partnership for a year are computed as if it were a body corporate.

Also, resident and nonresident banks are subject to a tax of 25% on taxable profits.

Proposed legislation to change the current tax regime has been presented to parliament. After enactment of the legislation, the existing Business Profits Tax Act will be repealed.

**C. Other significant taxes**

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Goods and Services Tax; the tax is expected to be passed on to the end consumer	6
Stamp duty; imposed on all imports and exports	0.1
Customs duties; imposed on imports; rates vary according to the type of import; the rates are expected to change during 2012	Various

**D. Foreign-exchange controls**

The Maldivian currency is the rufiyaa (Rf).

The Maldives does not impose any strict foreign-exchange controls. Foreign investors may remit all of their net profits after payment of a royalty or profit tax. Payment of the royalty is expected to be eliminated after the new profit tax enters into force.

# 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.** Tax incentives are offered in the Malta Enterprise Act and in regulations to the act, as well as in the Income Tax Act.

The Malta Enterprise Act has introduced a new set of incentives for the promotion and expansion of business, covering a wide range of sectors and activities. The incentives available under the act may be divided into six categories, which are described in the following six subsections. Other tax incentives available in Malta are discussed in the subsequent subsections.

*Access to finance.* Companies may be assisted through loan guarantees, soft loans (loans granted by the Malta Enterprise Corporation at low-interest rates to qualifying companies involved in activities that may contribute towards the development of the economy; the loans may not exceed 75% of the qualifying expenditure), loan interest subsidies or royalty financing in the case of highly innovative projects.

*Investment aid.* Companies engaged in specified activities can benefit from tax credits regarding capital expenditure, job creation or reinvestment of profits derived from trade or business in an approved project.

*Small and medium-sized business development.* Grants are available for the creation and development of innovative start-ups and the development of forward-looking small and medium-sized businesses carrying on or intending to carry out an activity that may contribute to the economic development of Malta, provided that certain conditions are fulfilled. The Malta Enterprise Corporation also provides assistance regarding the hiring of experts and the use of information communications technology or e-business (the conduct of business through information technology systems).

*Research and development and innovation programs.* Fiscal incentives and cash grants are offered to stimulate innovative enterprises to engage in research and development.

*Enterprise support.* Assistance is offered to businesses to support them in developing their international competitiveness, improving their processes and networking with other businesses.

*Employment and training.* The Employment and Training Corporation (ETC) is taking over and administering the employment and training incentives. Enterprises are supported in recruiting new employees and training their staff. These incentives help generate more employment opportunities and training activities.

*Income Tax Act.* The Income Tax Act provides for a deduction of 150% of research and development expenditure incurred.

*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 objectives of the shipping organization itself or for other shipping organizations within the same group
- 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.
- 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.

Income derived by a ship manager from ship management activities is deemed to be income derived from “shipping activities” and is exempt from income tax under the Income Tax Act if the following conditions are satisfied:

- The company maintains proper accounts relating to its shipping activities.
- The ship manager pays an annual tonnage tax to the Registrar-General.

For these purposes, “shipping activity” is the international carriage of goods or passengers by sea or the provision of other services to or by a ship as may be ancillary to such activities or associated with such activities, including the ownership, chartering or other operation of a ship engaged in all or any of the above activities or as otherwise may be prescribed.

Income derived by a licensed shipping organization from the sale or transfer of a tonnage-tax ship or from the disposal of a right to a ship, which when delivered or completed would qualify as a tonnage-tax ship, is exempt from tax.

*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 closed-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.

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%.

**Aviation income.** Income derived from the ownership, lease or operation of aircraft and aircraft engines used in the international transport of passengers or goods (aviation income) is deemed to arise outside Malta regardless of whether the aircraft is operated from Malta. Consequently, a company that is incorporated outside Malta but managed and controlled in Malta (resident but not domiciled for income tax purposes, or a "non-dom co") must pay tax on income derived from its aviation income on a remittance basis. Aviation income that is not received in Malta is not taxed in Malta. This implies that a non-dom co may control its Maltese tax liability through its remittances and that a non-dom co deriving aviation income that is not received in Malta is exempt from tax on its aviation income.

**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*) 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]).

- Goodwill, business permits, copyrights, patents, trademarks and trade names.
- Beneficial interests in trusts.
- Full or partial interests in partnerships

In certain cases, value shifting and degrouping result in taxable capital gains.

If a person acquires or increases a partnership share, a transfer of an interest in the partnership to that partner from the other partners is deemed to occur, and is accordingly subject to tax.

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
- 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.

If a company transfers property to its shareholders, or to an individual related to a shareholder, in the course of a winding up or

distribution of assets, who own all of the share capital of the company transferring the property, the transfer is exempt from tax if certain conditions are satisfied.

**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 that 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.

**Securitization.** The total income or gains of a securitization vehicle is realized or deemed to arise during the year in which such income or gains are recognized for accounting purposes. For purposes of calculating the chargeable income or gains of the securitization vehicle for income tax purposes, the following expenses are deductible:

- Relevant expenses provided under Article 14 of the Income Tax Act
- Amounts payable by the securitization vehicle to the originator or assignor
- Premiums, interest or discounts with respect to financial instruments issued or funds borrowed by the securitization vehicle
- Expenses incurred by the securitization vehicle with respect to the day-to-day administration of the securitization vehicle

Tax is chargeable on any remaining total income of the securitization vehicle, and a further deduction of an amount equal to the remaining total income may be claimed at the option of the securitization vehicle, subject to certain provisos and antiabuse provisions.

**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 Department 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.

**Allocation and distribution of profits.** The distributable profits of a company are allocated to five tax accounts in the following order:

- Final Tax Account
- Immovable Property Account
- Foreign Income Account
- Maltese Taxed Account
- Untaxed Account

The Final Tax Account contains distributable profits that have been subject to a final tax. The Immovable Property Account contains profits connected with immovable property located in Malta. The Foreign Income Account contains, broadly, foreign-source passive income. The Maltese Taxed Account contains profits that are not included in the Final Tax Account, Immovable Property Account or Foreign Income Account. The Untaxed Account contains an amount of profits or losses that is calculated by deducting the total sum of amounts allocated to the other accounts from the total amount of profits shown in the profit-and-loss account for that year.

The Full Imputation System applies to distributions from the Immovable Property Account, Foreign Income Account and Maltese Taxed Account. Under this system, the tax paid by the company is imputed as a credit to the shareholder receiving the dividends. Profits allocated to the Foreign Income Account and the Maltese Taxed Account result in tax refunds under the Refundable Tax Credit System (see *Refundable Tax Credit System*).

*Refundable Tax Credit System.* In 2007, the Maltese House of Representatives passed a law that implemented an agreement with the European Union (EU) relating to 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 or profits derived from a participating holding in a body of persons that does not satisfy the antiabuse provision (see *Participation exemption and participating holding system*) 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*) 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 the 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 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.

**Participation exemption and participating holding system.** Before 1 January 2007, profits derived from a participating holding were taxed at the rate of 35%. On distribution of such profits to non-resident shareholders, such shareholders were entitled to receive a full refund of the tax paid by the company. Effective from 1 January 2007, 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. At the option of the shareholders, a full refund may still be obtained.

Under the recent tax reform, a holding in another company is considered to be a participating holding if any of the following circumstances exist:

- A company holds directly at least 10% of the equity shares of a company whose capital is wholly or partly divided into shares, and such holding confers an entitlement to at least 10% of any two of the following:
  - Right to vote.
  - Profits available for distribution.
  - Assets available for distribution on a winding up.

The Commissioner of Inland Revenue may determine that the above provisions are satisfied if the minimum level of entitlement exists in the circumstances referred to in the proviso to the definition of “equity holding.” See below for the definition of “equity holding.”

- A company is an equity shareholder in another company, and the equity shareholder company may at its option 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, and the equity shareholder company is entitled to first refusal in the event of a 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 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 holds an investment representing a total value, as of the date or dates on which it was acquired, of a minimum of €1,164,000 (or the equivalent sum in a foreign currency) in a company and that holding in the company is held for an uninterrupted period of not less than 183 days.
- A company is an equity shareholder in a company, the holding of such shares is for the furtherance of the equity shareholder's 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, that is not resident in Malta and that is of a nature similar to a *partnership en commandite* (limited partnership) and whose capital is not divided into shares constituted under the Companies Act, is deemed to constitute a participating holding if it satisfies the provisions of any of the six bullets above.

For the purposes of the above rules, an “equity holding” is a holding of the share capital in a company that is not a property company if the shareholding entitles the shareholder to at least any two of the following rights (equity holding rights):

- Right to vote
- Right to profits available for distribution to shareholders
- Right to assets available for distribution on a winding up of the company

The terms “equity shares,” “equity shareholder” and “equity shareholding” are construed in accordance with the above definition.

The Commissioner of Inland Revenue may determine that an equity holding exists even if such holding is not a holding of the share capital in a company or does not consist solely of such a holding of share capital if it can be demonstrated that at any time an entitlement to at least two of the equity holding rights exists in substance.

A “property company” is a company that owns immovable property located in Malta or any rights over such property, or a company that holds, directly or indirectly, shares or interests in a body of persons owning immovable property located in Malta or any rights over such property.

A company or body of persons carrying on a trade or business that owns immovable property located in Malta or rights over such property is treated as not owning the immovable property or rights over such property if all of the following conditions are satisfied:

- The property consists only of a factory, warehouse or office used solely for the purpose of carrying on such trade or business.

- Not more than 50% of its assets consist of immovable property located in Malta.
- It does not carry on an activity from which income is derived directly or indirectly from immovable property located in Malta.

A holding of a company in a body of persons that is constituted, incorporated or registered outside Malta, that is not resident in Malta, that is of a nature similar to a *partnership en commandite* and that has capital 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. For the 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 vote, 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.

The application of the participation exemption is subject to an anti-abuse provision. The participation exemption applies to participating holdings if the body of persons in which the participating holding is held satisfies any one of the following three 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%.
- 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 (FRFTC), which may be claimed by companies that have a special empowerment clause in their Memorandum and Articles of Association. The empowerment clause requirement applies to companies resident in Malta before 1 January 2007 and is effective from 1 January 2011. Companies, other than companies subject to the empowerment clause requirement, can currently claim the FRFTC. A company resident in Malta before 1 January 2007

could claim the FRFTC without an empowerment clause until 1 January 2011. The FRFTC, 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 FRFTC 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 18 months preceding the date on which the company begins to carry on its trading activities)
- Unrealized exchange differences
- 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.

<b>Asset</b>	<b>Years</b>
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 €6,988.20.

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.
- 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	

<b>Nature of tax</b>	<b>Rate (%)</b>
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		Required percentage for major shareholding	Interest	Royalties
	Rate for minor shareholding %	Rate for major shareholding %			
Albania	15	5	25	5	5
Australia	15	15	N.A. (a)	15	10
Austria	15	15	N.A. (a)	5	10
Barbados	15	5	5	5	5
Belgium	15	15	N.A. (a)	10	10
Bulgaria	0	0	N.A. (a)	—	10
Canada	15	15	N.A. (a)	15	10
China	10	10	N.A. (a)	10	10
Croatia	5	5	N.A. (a)	0	0
Cyprus	15	15	N.A. (a)	10	10
Czech Republic	5	5	N.A. (a)	0	5
Denmark	15	0	25	0	0
Egypt	10	10	N.A. (a)	10	12
Estonia	15	5	25	10	10
Finland	15	5	10	10	10

	Dividends		Required percentage for major shareholding %	Interest %	Royalties %
	Rate for minor shareholding %	Rate for major shareholding %			
France	15	5	10	10	10
Georgia	0	0	N.A. (a)	0	0
Germany	15	5	10	0	0
Greece	10	5	25	8	8
Hungary	15	5	25	10	10
Iceland	15	5	10	0	5
India	15	10	25	10	15
Ireland	15	5	10	0	0
Isle of Man	0	0	N.A. (a)	0	0
Italy	15	15	N.A. (a)	10	10
Jersey	—	—	N.A. (a)	—	—
Jordan	10	10	N.A. (a)	10	10
Korea					
(South)	15	5	25	10	0
Kuwait	0	0	N.A. (a)	0	10
Latvia	10	5	25	10	10
Lebanon	5	5	N.A. (a)	0	5
Libya	15	15	N.A. (a)	15	15
Lithuania	15	5	25	10	10
Luxembourg	15	5	25	0	10
Malaysia	—	—	N.A. (a)	15	15
Montenegro	10	5	25	10	5/10
Morocco	6.25	10	25	10	10
Netherlands	15	5	25	10	10
Norway	15	15	N.A. (a)	10	10
Pakistan	—	15	20	10	10
Poland	15	5	20	10	10
Portugal	15	10	25	10	10
Qatar	0	0	N.A. (a)	0	5
Romania	5	5	N.A. (a)	5	5
San Marino	10	5	25	0	0
Serbia	5	10	25	10	5/10
Singapore	—	—	N.A. (a)	10	10
Slovak					
Republic	5	5	N.A. (a)	0	5
Slovenia	15	5	25	5	5
South Africa	5	5	N.A. (a)	10	10
Spain	5	0	25	0	0
Sweden	15	0	10	0	0
Syria	—	—	N.A. (a)	10	18
Tunisia	10	10	N.A. (a)	12	12
United Arab					
Emirates	—	—	N.A. (a)	0	0
United					
Kingdom	—	—	N.A. (a)	10	10
United					
States (b)	15	5	10	10	10
Nontreaty					
countries	0	0	N.A. (a)	0	0

(a) Not applicable.

(b) These are the general rates, but other rates may apply in specified circumstances.

Malta has signed tax treaties with Bahrain, Belgium (to replace the existing treaty), Israel, Switzerland, Turkey and Uruguay, but these tax treaties are not yet in force.

## Mauritania

Please direct all inquiries regarding Mauritania to Raky Gueye of the Dakar, Senegal office (telephone: +221 (33) 849-2219; fax: +221 (33) 823-8032; email: raky.gueye@sn.ey.com).

### 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.	3 (c)
Directors' Fees	10
Payments for Services	3 (c)
Branch Remittance Tax	10 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) The minimum tax is 2.5% of annual turnover. However, the tax may not be less than MRO 750,000.
- (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 2.5% of turnover. However, the tax may not be less than MRO 750,000.

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*) 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
- 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 buildings	4
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 five 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
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	0.25 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.

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# 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	10 (b)
Royalties	10/15 (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. 5 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) The withholding tax rate is 10% for royalties paid to residents. For nonresidents, the rate is 15% unless the recipient is resident in a treaty country and the applicable treaty provides for a lower rate. The withholding tax rate does not apply if the payer is a corporation holding a Category 1 Global Business License under the Financial Services Act 2007 and if it pays the interest out of its foreign-source income.

## 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.** The corporate income tax rate is 15% of the annual taxable net profits.

A requirement to establish a Corporate Social Responsibility (CSR) fund applies to companies, effective from 1 July 2009. Companies must set up a CSR fund equal to 2% of chargeable income for the preceding year if they intend to take any of the following actions:

- Implement an approved program
- Implement an approved program under the National Empowerment Foundation
- Finance an approved Non-Government Organization

A committee has been set up for the purposes of the approval process. This committee is chaired by the Minister of Finance and Economic Empowerment. Under the 2012 budget proposals, the committee will include one additional member from civil society, the private sector and the Ministry of Housing and Lands. The committee provides that the CSR activities must focus on the following areas:

- Socioeconomic development
- Health
- Education and training
- Environment
- Catastrophic intervention and support

If the contribution is less than the 2% minimum, the difference must be paid to the Mauritius Revenue Authority (MRA) when the company submits its annual tax return. Certain companies, such as Global Business Corporations set up under the Financial Services Act 2007 and companies that hold an Integrated Resort

certificate referred to in the Investment Promotion (Real Estate Development Scheme) Regulations, 2007, are excluded from the purview of the CSR rules. Book profit for CSR purposes excludes profits or losses on disposals or revaluations of fixed assets.

A special levy is imposed on 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% (3.4% for four years of assessment, which are the 2012, 2011, 2010 years of assessment and the preceding year of assessment) of the book profit and 0.5% (1% for four years of assessment, which are the 2012, 2011, 2010 years of assessment and the preceding year of assessment) 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.

A one-off charge applies to banks for the 2011 year of assessment. The one-off charge equals the sum of 0.5% of turnover and 1.25% of book profit. The one-off charge does not apply to banking transactions with nonresidents and companies holding a Global Business License 1 (GBL1 Companies) or a Global Business License 2 (GBL2 Companies). For further details, see *Companies engaging in offshore activities*.

“Telephony service providers,” defined as a provider of public fixed or mobile telecommunication networks and services, are subject to a solidarity levy for the 2009-2010, 2010, 2011 and 2012 years of assessment. The levy equals the sum of 5% of book profit and 1.5% of turnover. The levy does not apply if, in the preceding year, the service provider incurred a loss or if its book profit did not exceed 5% of its income. The 2012 budget proposals provide that the solidarity levy will also apply for the 2013 year of assessment.

**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 31 December 2013. Under the 2012 budget proposals, this exemption will be extended for an indefinite time period.
- 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 31 December 2013. Under the 2012 budget proposals, this exemption will be extended for an indefinite time period.
- Income derived by a private Freeport developer or Freeport operator from paper trading activities is exempt from income tax for the income years from 1 July 2003 through 31 December 2013. Under the 2012 budget proposals, this exemption will be extended for an indefinite time period.

*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%. 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 GBL1 Companies or GBL2 Companies. GBL2 companies must conduct their activities with nonresidents of Mauritius or GBL1 companies. Under the amendment contained in the Finance (Miscellaneous Provisions) Act 2010, GBL1 companies may conduct business in Mauritius.

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 out of their foreign-source income to nonresidents are exempt from tax. Interest paid by GBL1 Companies to nonresidents that do not have a place of business in Mauritius is exempt from tax to the extent that the interest is paid out of foreign-source income. 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. 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 began their operations before 30 June 2006 are exempt from income tax for a period of up to 10 income years. If a company began 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 on assets other than immovable property are not subject to income tax. The Finance (Miscellaneous Provisions) Act 2010 (FMPA 2010) introduced a capital gains tax regime for transactions in immovable properties. Following the 2012 budget, the capital gains tax regime introduced by the FMPA 2010 was repealed, effective from 5 November 2011. As a result, the information below applies only to transactions performed on or before 4 November 2011.

The following are deductible in computing the taxable portion of the gain:

- Acquisition cost
- Registration duty
- Capital expenditure incurred subsequent to acquisition
- Land transfer tax
- Cost incurred on the sale or transfer of assets

For immovable properties that were acquired before 1 January 1988, the acquisition cost is increased by the following factors.

<b>Acquisition date</b>	<b>Factor</b>
Up to 31 December 1963	7.5
1 January 1964 to 31 December 1968	7
1 January 1969 to 31 December 1973	6

Acquisition date	Factor
1 January 1974 to 31 December 1978	3
1 January 1979 to 31 December 1983	1.5
1 January 1984 to 31 December 1987	1.1

The above factors also apply to buildings constructed before 1 January 1988.

Transfer of shares in a company results in a capital gain if control of a company changes and if the value of the immovable properties of the company exceeds 95% of its total assets. An increase in the shareholding of a controlling shareholder within a period of 12 months after the date of change of control may also result in a capital gain.

A loss incurred in a transaction in immovable property cannot be offset against other taxable income of the seller and cannot be carried forward. Gains derived on the sale of a company between companies forming part of the same group are exempt.

**Withholding taxes.** Withholding taxes apply to 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.

Payment	Rate (%)
Interest	10 (a)
Royalties	10/15 (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. 5 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. The withholding tax rate is 10% for residents and 15% for nonresidents. For a recipient of royalties that is resident in a treaty country, the treaty rate applies if it is lower than 15%. The treaty rate does not apply if the payer is a GBL1 Company.

If a recipient of a payment proves to the Director-General of the MRA 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.

The 2012 budget provides that the withholding tax rate mechanism will be extended to the following payments:

- Payments to contractors and subcontractors, and payments for work other than civil construction, such as mechanical and electrical works
- Payments for services provided by doctors, dentists, attorneys, solicitors, barristers and legal consultants
- Payments to nonresidents for services performed in Mauritius, unless the right to tax rests with the nonresident service provider under the provisions of a tax treaty

- Interest paid by persons other than financial institutions and companies in the Global Business sector to nonresidents
- Rent collected by tour operators or other intermediaries on behalf of property owners

The budget speech did not announce the withholding tax rates for the above payments.

**Administration.** The income year is 1 January to 31 December of the year preceding the year of assessment. Companies may choose a financial year-end other than 31 December for tax purposes. The income year-end was previously 30 June.

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 2009 for all companies, 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. Under the 2012 budget, a company with annual turnover of Rs. 2 million or less will not be required to pay tax under the APS.

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.

After the MRA issues a notice of assessment, the taxpayer may object to the assessment. For an objection to be valid, 30% of the total tax claimed must be paid to the MRA.

The 2012 budget proposals provide that a Voluntary Disclosure of Income Arrangement (VDIA) will be operated by the MRA during the six months ending 30 June 2012. No penalties will apply under the VDIA. In addition, no interest will apply if the tax is paid before 30 June 2012. For tax arrears, a Tax Arrears Settlement Scheme (TASS) will operate up to 30 June 2012. Under the TASS, the total collecting penalties will be waived, and 75% of the assessing penalties will be waived. For objections that were not entertained by the MRA on the basis of nonpayment of the 30% tax (see above), an Expeditious Dispute Resolution of Tax (EDRT) scheme will be introduced to review the assessments raised. Under the EDRT, all penalties will be waived.

**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, except for banks, 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 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 ended 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 ended 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
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.

Under an amendment contained in the Finance (Miscellaneous Provisions) Act 2010, the total annual allowances on a motor car cannot exceed Rs. 3 million. The Rs. 3 million cap does not apply to persons engaged in the business of tour operation and car rental.

**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. 748	6

Nature of tax	Rate (%)
Employee, limited to Rs. 374	3
Land transfer tax; payable by transferor based on the value of the immovable property transferred; also applies to transfers of shares that result in a change in control of a company that owns immovable property	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 GBL1 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 GBL1 Companies to nonresidents that do not have a place of business in Mauritius. The following table 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 %
Bangladesh	10	15	15
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)	15 (f)	15 (g)
Germany	5 (b)	15 (f)	15
India	5 (a)	15 (f)	15
Italy	5 (b)	15 (f)	15
Kuwait	0	0	10
Lesotho	10	10	10
Luxembourg	5 (a)	0	0
Madagascar	5 (h)	10	5
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
Qatar	0	0	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
Tunisia	0	2.5	2.5
Uganda	10	10	10
United Arab Emirates (i)	0	0	0
United Kingdom	10 (c)	15 (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%.
- (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.

Treaties with Egypt, Kenya, Malawi, Nigeria, Vietnam and Zambia await signature. Mauritius is negotiating tax treaties with Algeria, Burkina Faso, Canada, the Czech Republic, Ghana, Greece, Iran, Portugal, St. Kitts and Nevis, Saudi Arabia and Yemen.

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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	0
Interest	
Paid on Negotiable Instruments	10 (a)
Paid to Banks	10 (a)(b)
Paid to Machinery Suppliers	21 (a)
Paid to Others	30 (a)
Royalties	
From Patents and Trademarks	30 (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
- 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.** Corporations are subject to federal corporate income tax at a rate of 30%.

**Flat Rate Business Tax.** Flat Rate Business Tax (IETU) was introduced as a minimum tax to replace the Minimum Tax on Assets. The rate of IETU is 17.5% for 2012. This 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 30%. The following is an illustration of how to compute the net tax profit for the CUFIN account.

	<b>MXN</b>
Corporate taxable income	1,000
Income tax (30%)	(300)
Nondeductible profit sharing to employees (estimated)	(150)
Nondeductible expenses	<u>(50)</u>
Net tax profit (not subject to corporate income tax on distribution)	<u>500</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
- 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.

Asset	Rate (%)
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.

Nature of tax	Rate (%)
Value-added tax, on any supply of goods or services, excluding exports, and on imports	
General rate	16
Border regions	11
Certain foods and medicines	0
Real estate acquisition tax; local tax on market value of real estate transferred (approximate rates)	2 to 4.5

Nature of tax	Rate (%)
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
Barbados	5/10 (d)	10	10
Belgium	5/15 (a)	10/15 (t)	10
Brazil	10/15 (a)(b)	15 (b)	15 (b)
Canada	5/15 (d)	10	10 (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)	5/10 (n)	10
Greece	10	10	10
Hungary	5/15 (d)	10	10
Iceland	5/15 (d)	10	10
India	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 (South)	0/15 (k)	5/15 (n)	10

	<b>Dividends (l)</b>	<b>Interest</b>	<b>Patent and know-how royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Luxembourg	5/15	10	10
Netherlands	0/5/15 (d)(s)	5/10 (p)	10
New Zealand	15 (b)	10	10
Norway	0/15 (a)	10/15 (t)	10
Panama	5/7.5 (a)	5/10 (n)	10
Poland	5/15 (a)	10/15 (e)	10
Portugal	10	10	10
Romania	10 (d)	15	15
Russian Federation	10	10	10
Singapore	0	5/15 (n)	10
Slovak Republic	0	10	10
South Africa	5/10 (d)	10	10
Spain	5/15 (a)	5/10/15 (b)(h)(t)	10 (b)(g)
Sweden	5/15 (d)	10/15 (q)	10
Switzerland	0/15 (d)	5/10 (p)	10
United Kingdom	0	5/10/15 (j)	10
United States	0/5/10 (d)	4.9/10/15 (r)	10
Uruguay	5	10	10
Nontreaty countries	0	4.9/10/21/30 (i)	25/30 (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. Under the Panama treaty, the lower rate applies if the recipient owns at least 25% 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 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 Organization for Economic Cooperation and Development (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. Under the U.S. treaty, the 0% rate applies if the recipient owns 80% of the voting shares and if other requirements are met.

Under the Switzerland treaty, the 0% rate applies if the recipient is a corporation owning at least 10% of the shares of the payer or if the beneficiary of the dividend is a pension fund.

- (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.
    - 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 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 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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## Moldova

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### **A. At a glance**

Corporate Income Tax Rate (%)	12 (a)
Capital Gains Tax Rate (%)	6 (a)
Branch Tax Rate (%)	12 (a)
Withholding Tax (%)	
Dividends	6/15 (b)
Interest (c)(d)	
Payments to Residents	
Companies	0/12
Individuals	0/15
Payments to Nonresidents	12
Royalties	12/15 (d)(e)
Services	7/10/12 (f)
Insurance Premiums	12 (g)
Winnings from Gambling	12/18 (h)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (i)

(a) See Section B.

(b) In general, a 6% withholding tax applies to dividends paid to nonresidents and residents. A 15% rate applies to dividends related to the 2008 through 2011 fiscal years.

(c) Interest on deposits and securities of individuals is not taxable until 2015. Interest on bank deposits or corporative bonds of legal entities is not taxable until 2015, 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 companies receiving interest and royalties include such payments in taxable income, which is subject to corporate income tax at the standard rate of 12%. They may credit the withholding tax against the tax shown in their annual tax return. A 15% withholding tax is applied to interest paid to resident individuals.

(e) A 12% withholding tax rate applies to royalties paid to nonresidents. A 15% withholding tax rate applies to royalties paid to residents.

(f) The 12% rate applies to services rendered by nonresidents. The 10% rate 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 7% rate applies to certain payments made to resident individuals.

(g) This withholding tax applies to insurance premiums paid to nonresidents.

(h) The 18% rate applies to winnings from gambling paid to residents, and the 12% rate applies to winnings from gambling paid to nonresidents.

(i) 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.** The rates of corporate income tax in Moldova are described below.

*Standard corporate income tax rate.* The standard corporate income tax rate in Moldova is 12%.

*Small and medium-sized companies (except for farmers and individual entrepreneurs) that are not registered as value-added taxpayers.* The following are the tax rates applicable to small and medium-sized companies (except for farmers and individual entrepreneurs) that are not registered as value-added tax (VAT) payers:

- If, for the previous fiscal reporting period (ending 31 December), the company obtained income from operational activities in an amount up to MDL 100,000, it must apply a 3% tax rate to the operational activity income obtained in the current reporting period.
- If, for the previous fiscal reporting period (ending 31 December), the company obtains income from operational activities in an amount from MDL 100,000 to MDL 600,000, it can choose to be taxed at a 3% tax rate applied to operational activity income obtained in the current reporting period or at the standard corporate income tax rate of 12%.

*Farmers.* The corporate income tax rate for farmers is 7%.

*Individual entrepreneurs.* For individual entrepreneurs, the corporate income tax rates are 7% of annual taxable income that does not exceed MDL 25,200 and 18% of annual taxable income that exceeds MDL 25,200.

**Tax incentives.** Tax incentives available in Moldova are described below.

*Free-economic zones.* Residents of free-economic 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-economic zone
- A 75% reduction of the standard corporate profits tax rate on income other than the income 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-economic zone, beginning with the quarter following the quarter in which investments made in fixed assets or to develop the region reach US\$1 million

- A five-year exemption from corporate profits tax on income derived from the exportation of goods originating in a free-economic zone, beginning with the quarter following the quarter in which investments made in fixed assets or to develop the region reach US\$5 million

*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
- 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
- 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.

**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.** In general, a 6% withholding tax is imposed on dividends paid to nonresidents and residents. A 15% withholding tax is imposed on dividends related to the 2008 through 2011 fiscal years.

**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 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
- Provisions for bad debts

**Inventories.** Assets valuation income is nontaxable. Assets valuation losses are nondeductible.

**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	12.5
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-third of the loss in each of the three 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
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, sugar produced from sugar beet and agricultural products	8
Natural and liquefied gases delivered in or imported into Moldova	6
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	23
Employee	6
Medical insurance contributions, on remuneration; paid by	
Employer	3.5
Employee	3.5
Customs duties; rates set by Customs Tariff Law	Various
Local taxes on real estate (other than real estate used for agricultural or dwelling purposes)	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 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
Cyprus	10	5	5	5
Czech Republic	15	5	5	10
Estonia	10	10	10	10
Finland	15	5	5	3/7 (c)
France (o)	15	5 (d)	5	2
Georgia (o)	15	5 (e)	10	10
Germany	15	15	5	0
Greece	15	5	10	8
Hungary	15	5	10	0
Ireland	10	5	5 (g)	5
Israel	10	5	5	5
Italy	15	5	5	5
Japan	15	15	10	0/10 (f)
Kazakhstan	15	10	10	10
Kyrgyzstan	15	5	10	10
Latvia	10	10	10	10
Lithuania	10	10	10	10
Luxembourg	10	5	5 (g)	5
Macedonia	10	5	5	10
Montenegro	15	5	10	10
Netherlands	15	0/5 (h)	5	2
Oman	5	5	5	10
Poland	15	5	10	10
Portugal	10	5	10	8
Romania	10	10	10	10/15 (i)
Russian Federation	10	10	0	10
Serbia	15	5	10	10

	Dividends		Interest	Royalties
	A	B		
	%	%	%	%
Slovak Republic	15	5	10	10
Slovenia	10	5	5	5
Spain	10	5 (j)	5	8
Switzerland	15	5	10 (k)	0
Tajikistan	10	5	5	10
Turkey	15	10	10	10
Turkmenistan (o)	10	10	10	10
Ukraine	15	5	10	10
United Kingdom	10	5 (l)	5	5
Uzbekistan	15	5	10	15
Nontreaty countries	6/15 (m)	6/15 (m)	12 (n)	12

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) The 3% rate applies to royalties paid for the use of, or the right to use, patents, computer software, designs or models, plans, and secret formulas or processes, or for information concerning industrial, commercial or scientific experience. The 7% rate applies to other royalties.

(d) This rate applies if the beneficiary of the dividends is a company holding directly at least 10% of the payer of the dividends.

(e) 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.

(f) Royalties received for the use of, or the right to use, copyrights of literary, artistic or scientific works, including cinematographic films and films or tapes for radio or television broadcasting, are exempt from tax.

(g) No tax is withheld if the effective beneficiary of the interest is a financial institution.

(h) 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 that has invested US\$300,000 or an equivalent amount of national currency of a European Union (EU) member state in the capital of the payer of the dividends.

(i) 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.

(j) No tax is withheld if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 50% of the capital of the payer of the dividends.

(k) No withholding tax is imposed on interest paid on bank loans or on interest paid with respect to the following:

- Sales on credit of industrial, commercial or scientific equipment
- Sales of goods between enterprises

(l) No tax is withheld if either of the following conditions is satisfied:

- The beneficial owner of the dividends is a company that holds directly or indirectly at least 50% of the capital of the company paying the dividends and that has invested at least £1 million (or the equivalent amount in another currency) in the capital of the company paying the dividends at the date of payment of the dividends.
- The beneficial owner of the dividends is a pension scheme.

(m) In general, the withholding tax rate for dividends is 6%. For dividends related to the 2008-2011 fiscal years, the withholding tax rate is 15%.

(n) Interest on deposits and securities of resident individuals is not taxable until 2015. Interest on bank deposits or corporative bonds of legal entities is not taxable until 2015, 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.

(o) This treaty has been signed, but it is not yet in effect.

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## A. At a glance

Corporate Income Tax Rate (%)	10/25 (a)
Capital Gains Tax Rate (%)	10/25 (a)(b)
Nonresident Corporate Income Tax Rate (%)	10/25 (a)
Withholding Tax (%) (c)	
Dividends	20
Interest	20
Royalties	20
Rent	20
Management and Administrative Fees	20
Lease Interest	20
Use of Tangible and Intangible Assets	20
Goods Sold, Work Performed or Services Provided	20
Branch Profits Remittance Tax	20 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	2/4/8 (e)

- (a) The corporate tax system is progressive with annual taxable income of up to MNT 3 billion subject to tax at a rate of 10% and taxable profits in excess of this amount taxed at a rate of 25%.
- (b) Gains derived from the sale of immovable property are subject to tax at a rate of 2%.
- (c) These withholding tax rates apply to payments to nonresidents.
- (d) This is a technical tax because the Investment Law of Mongolia generally requires foreign companies to carry on business through a Mongolian limited liability company (LLC).
- (e) The general rule is that losses can be carried forward for two years, and the use of such losses is limited to 50% of taxable income in any year. For companies in the mining and infrastructure sector, losses can be carried forward for four to eight years, depending on the investment amount, and no restriction is imposed on the use of losses.

## B. Taxes on corporate income and gains

**Corporate income tax.** Permanent residents of Mongolia are taxed on their worldwide income. A company is regarded as a permanent resident of Mongolia in either of the following circumstances:

- It is incorporated in Mongolia.
- It is a foreign entity that has its head office located in Mongolia.

Permanent residents may qualify for a tax credit with respect to income generated from the production and planting of specified products (see *Tax Incentives*).

Nonresidents of Mongolia are taxed on Mongolian-source income only. The term nonresident is broadly defined to include foreign corporate entities that conduct business in Mongolia through a representative office and foreign entities operating in Mongolia that do not qualify as permanent residents.

**Rates of corporate tax.** The corporate tax system is progressive with annual taxable income of up to MNT 3 billion subject to tax at a rate of 10% and taxable profits in excess of this amount taxed at a rate of 25%.

Certain types of income received by residents are taxed at different tax rates, as indicated in the following table.

Income	Rate (%)
Dividends	10
Royalties	10
Interest	10
Sale of rights (gross)	30
Gambling and lottery income	40
Sale of immovable property	2

**Tax incentives.** A 50% tax credit is available to taxpayers that generate income from the production and planting of the following:

- Cereal, potatoes and vegetables
- Milk
- Fruits and berries
- Fodder plants

Double tax treaties offer additional tax credits for corporate entities taxed in foreign countries.

An exemption from corporate tax is available to nonresident investors that operate in the oil industry in Mongolia under a product-sharing contract with the Mongolian government.

Foreign investors investing certain amounts in Mongolia may apply for stability agreements to govern their investments and accordingly benefit from stable tax conditions for a fixed term. An investment project of more than US\$20 million may apply for a 10-year term, and an investment project of more than US\$50 million may apply for a 15-year term. In the mining sector, if the investment for the first 5 years exceeds certain amounts, the following fixed terms are allowed:

- US\$50 million: 10 years
- US\$100 million: 15 years
- US\$300 million: 30 years

**Capital gains.** Capital gains and losses are treated in the same manner as other taxable income and losses. Gains are subject to the progressive Mongolian corporate tax rates of 10% and 25%. The exception to this rule is that gains derived from the sale of immovable property are subject to tax at a rate of 2%. Gains derived by nonresidents on the disposal of Mongolian assets may be exempt from tax if structured to be sourced offshore.

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

Tax is calculated by the taxpayer on an accrual basis. The tax authorities deliver monthly and quarterly tax schedules to taxpayers that must pay tax before the 25th day of each month.

Taxpayers must also file quarterly returns within 20 days after the end of each quarter. An annual return is due on 10 February following the end of the tax year and the taxpayer must settle all outstanding liabilities by that date.

If it is necessary to withhold tax on dividends, royalties, sales of rights, transfers of profits overseas by representative offices of foreign companies and Mongolian income earned by nonresident taxpayers, the withholding tax must be paid over to the state within seven working days. Withholding tax on income received from the sale of immovable property must be paid over to the state within 10 working days after the sale of the property. All withholding tax statements must be submitted within 20 days after the end of the quarter, and an annual statement must be filed by 10 February following the end of the tax year.

On submission of the tax returns, the Mongolian tax authorities conduct an administrative check of the returns to ensure all requirements have been met for filing. At a later stage, the tax authorities can conduct a more detailed review of the returns through a tax audit.

**Dividends.** Dividends paid between permanent residents of Mongolia are taxed at a rate of 10%. Dividend income received by a nonresident from a permanent resident is subject to withholding tax at a rate of 20%. This rate may be reduced under an applicable double tax treaty.

**Foreign tax relief.** The domestic law states that a foreign tax credit is available only if the foreign tax is paid in a country with which Mongolia has a double tax treaty.

### C. Determination of trading income

**General.** Taxable income is broadly defined as total revenue less the following:

- Deductible expenses
- Exempt income
- Tax losses

Taxable revenue falls under the following three categories:

- **Operation income.** This is primarily income generated from business activity. However, it also includes, among other items, income from the sale of shares and securities, income from the sale of licenses, income from the sale of intangible assets and gains on foreign-currency exchange rates.
- **Property income.** This includes rental income, royalties, dividends and interest income.
- **Income from the sale of property.** This includes the sale of movable and immovable property (with the exception of shares and securities).

Different sources of taxable income are taxed at different rates (see Section B).

The following types of income are exempt from tax:

- Interest earned on government bonds.

- Income and dividends earned by nonresident taxpayers trading in the oil industry in Mongolia under a product-sharing contract and derived from the sale of its share of product. If the nonresident taxpayer transfers this income abroad, no tax is levied.
- Income earned by cooperatives from sales of their members' products through intermediary means.

The tax law provides a list of deductible expenses. Any items that are not listed as deductible in the tax law must be added back when computing taxable profits.

The following expenses are nondeductible expenses:

- Expenses incurred in earning exempt income
- Expenses not documented by the taxpayer
- Payments from which tax has not been withheld correctly
- Rental payments under finance leases
- Fines and penalties imposed by the tax authorities

Specific restrictions apply to the deductibility of the following:

- Regular maintenance expenses
- Voluntary insurance premium fees
- Reserves accumulated in the risk funds of banks and other non-banking financial institutions
- Per-diem expenses
- Natural disaster restoration fees
- Depreciation of inventory

Third-party interest payments on loans to finance the company's primary and auxiliary production, operations, services and purchases of properties are deductible for tax purposes, subject to thin-capitalization rules.

Nonresidents carrying out trading in Mongolia through a representative office may deduct its business expenses in accordance with the rules applicable to permanent residents. However, expenses incurred outside of Mongolia and management and administrative expenses not related to the generation of business income are not deductible for tax purposes.

**Tax depreciation.** Tax depreciation of noncurrent assets is calculated using the straight-line method. The following are the useful economic lives of various noncurrent assets.

<b>Noncurrent assets</b>	<b>Useful economic life (years)</b>
Building and construction	40
Machinery and equipment	10
Computers, computer parts, software	3
Intangible asset with indefinite useful life	10
Intangible asset with definite useful life (includes licenses for mineral exploration and extraction)	Validity period
Other noncurrent assets	10

The depreciation value for a mineral exploration and extraction license is the sum of its purchase price and fees paid for ownership and transference of such license.

If an asset is only partially used in generating taxable profits, the tax depreciation claimed is accordingly prorated. If the taxpayer ceases to use its own depreciable assets to generate taxable profits, the asset is deemed sold and tax is levied on the higher of the

book value or the market value of the asset. Land and inventory are nondepreciable assets.

**Relief for losses.** Tax losses can be carried forward for up to two years and the use of such losses is restricted to 50% of taxable profits in any tax year. For companies in the mining and infrastructure sector, losses can be carried forward for four to eight years, depending on the investment amount, and no restriction is imposed on the use of losses.

No carryback is possible.

**Groups of companies.** Tax grouping is not allowed in Mongolia.

#### D. Other significant taxes

The following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Royalties; paid on the sale of mining products; the two types of royalties are standard flat rate royalties and surtax royalties; the rates of the standard flat rate royalties depend on the type of minerals and whether they are sold within Mongolia; the rates of the surtax royalties vary depending on the type of minerals, their market prices and their degree of processing; surtax royalties are not imposed on minerals below a certain market price	
Standard flat rate royalties	
Coal and commonly occurring minerals sold in Mongolia for power plants	2.5
Coal sold abroad, commonly occurring minerals sold abroad and minerals that are not commonly occurring and that are sold in Mongolia or abroad	5
Surtax royalties	
Copper	0 to 30
Other minerals	0 to 5
Value-added tax (VAT); applicable to the supply of taxable goods and services in Mongolia and to goods imported into Mongolia; taxpayers must register for VAT if taxable turnover exceeds MNT 10 million; they can voluntarily register for VAT if taxable turnover reaches MNT 8 million or if they have invested more than US\$2 million in Mongolia; the tax law specifically indicates zero-rated and exempt items; taxable supplies are subject to VAT on the fair market value of the goods sold, work performed or services provided; the taxpayer is responsible for VAT on goods and services received from nonresidents; the Mongolian tax law allows VAT-registered taxpayers to offset output VAT with input VAT if this is supported by appropriate documentation; the excess of input VAT over output VAT can be carried forward for offset against future VAT or other tax liabilities; VAT exemptions are available in certain industries; VAT grouping is	

Nature of tax	Rate (%)
possible; VAT is accounted for monthly and VAT payments must be made by the 10th day of the following month; VAT returns must be filed by the 10th day of each month	10
Excise tax; levied on individuals and legal entities that manufacture or import goods, such as alcoholic beverages, tobacco, gasoline and diesel fuel and automobiles; physical units of technical devices and equipment used for betting and gambling are also subject to excise tax; rate varies depending on the amount and the product	Various
Customs duty; levied on the majority of goods imported into Mongolia; information technology, medical equipment and pure-bred livestock are zero-rated and specified equipment imported into Mongolia by small and medium-sized enterprises are exempt	5
Stamp duty; levied on various types of services; the rate depends on the type of services involved	Various
Immovable property tax; levied on the value of the immovable property; the value on which the tax is levied is the value registered with the government registration authority; if the property has not been registered, the insured value is used; if neither the registered nor the insured value is available, the accounting value is used in the calculation (Effective from 1 January 2013, the rate may be increased to up to 1%, depending on the size, location and market demand.)	0.6%
Air pollution payment; applies to domestically produced raw coal, used or imported organic solvents and vehicles	Various
Social security taxes; applicable to Mongolian citizens and foreign citizens employed on a contract basis by economic entities, the government or religious or other organizations undertaking activities in Mongolia; consists of compulsory health and social insurance taxes; charges are capped at MNT 140,400 per month for employees	11 to 13
Employers	11 to 13
Employees	10

## E. Miscellaneous matters

**Foreign-exchange controls.** The Mongolian currency is the togrog (MNT).

Foreign revenue and expenses must be converted into togrogs on the date of the transaction.

Realized foreign-exchange gains and losses are taxable and deductible, respectively.

**Transfer pricing.** Transactions between the taxpayer and a related party must follow arm's length principles. If these principles are

not followed, the tax authorities may seek to adjust the transaction to fair market value. No contemporaneous documentation requirements or similar requirements are imposed.

**Debt-to-equity rules.** Interest paid to dependent parties is subject to a debt-to-equity ratio of 3:1.

## F. Treaty withholding tax rates

The table below provides Mongolian withholding tax rates for dividends, interest and royalties paid from Mongolia to residents of various treaty countries. The rates reflect the lower of the treaty rate and the rate under domestic law. The table below is for general guidance only. The government of Mongolia has made public statements about threatening to cancel various treaties as a result of perceived tax abuse. This list below is evolving and advice should be obtained to ensure that the treaty rates are still current.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Austria	5/10 (a)	10	5/10 (b)
Belarus (c)	10	0/10 (d)	10
Belgium	5/15 (e)	10 (f)(dd)	5 (dd)
Bulgaria	10	10	10
Canada	5/15 (g)	0/10 (h)	5/10 (i)
China	5	10	10
Czech Republic	10	0/10 (j)	10
France	5/15	0/10	0/5
Germany	5/10 (k)	0/10 (l)	10
Hungary	5/15 (m)	0/10 (n)	5
India	15	0/15 (o)	15
Indonesia	10	0/10 (p)	10
Kazakhstan	10	10	10
Korea (South)	5	5	10
Kuwait (q)	5	5	10
Kyrgyzstan	10	10	10
Luxembourg	0/5/15 (r)	0/10 (dd)	5
Malaysia	10	10	10
Netherlands	0/15 (s)	10	5
Poland	10	0/10 (t)	5
Russian Federation	10	10	20 (u)
Singapore	0/5/10 (v)	5/10 (w)(dd)	5
Switzerland	5/15 (x)	10	5
Thailand (c)	10	10/15 (y)	5/15 (z)
Turkey	10	10	10
Ukraine	10	0/10 (aa)	10
United Arab Emirates (c)	0	0	10
United Kingdom	5/15 (bb)	7/10 (cc)	5
Vietnam	10	10	10
Nontreaty countries	20	20	20

- (a) The 5% rate applies if the recipient of the dividends is a company (excluding partnerships) that holds directly at least 10% of the capital of the company paying the dividends. The 10% rate applies to all other dividends.
- (b) The 5% rate applies to royalties paid for patents, trademarks, designs or models, plans, secret formulas or processes, or information 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.
- (c) This treaty is not yet in force.

- (d) The 0% rate applies if the loan is provided to the government or the central bank. The 10% rate applies in all other cases.
- (e) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly or indirectly at least 10% of the capital of the company paying the dividends. The 15% rate applies to all other dividends.
- (f) The following types of interest are exempt from tax in the contracting state in which the interest arises:
- Interest on commercial debt claims
  - Interest paid with respect to loans made, guaranteed or insured by public entities or credits extended, guaranteed or insured by public entities, the purpose of which is to promote exports
  - Interest on loans granted by banking enterprises
  - Interest on deposits and interest paid to the other contracting state, or a political subdivision or local authority thereof
- (g) 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 in the company paying the dividends (except in the case of dividends paid by a nonresident-owned investment corporation that is a resident of Canada). The 15% rate applies to other dividends.
- (h) The 0% rate applies to interest paid on loans made to the government or a political subdivision. The 10% rate applies in all other cases.
- (i) The 5% 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 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 with respect to rental or franchise agreements). The 10% rate applies in all other cases.
- (j) The 0% rate applies to interest paid to (or by) the government (or specified institutions), subject to further conditions.
- (k) The 5% rate applies if the recipient of the dividends is a company (other than a partnership) that owns directly at least 10% of the capital of the company paying the dividends. The 10% rate applies to other dividends. Silent partnership income is taxed at the domestic rate of 25%.
- (l) The 0% rate applies to interest arising in Germany that is paid to the Mongolian government or a Mongolian bank.
- (m) The 5% rate applies if the beneficial owner is a company that holds directly at least 25% of the capital of the company paying the dividends. The 15% rate applies to other dividends.
- (n) The 0% rate applies to interest paid on loans to the government, the central bank, a political subdivision or a local authority. The 10% rate applies in all other cases.
- (o) The 0% rate applies to interest paid on loans to the government, the central bank, a political subdivision or a local authority, the Trade and Development Bank in Mongolia or the Industrial Development Bank of India or another recipient approved by the government. The 15% rate applies in all other cases.
- (p) The 0% rate applies to interest paid on loans to the government or central bank. The 10% rate applies in all other cases.
- (q) This treaty is not yet in force. The domestic law in Kuwait does not provide for withholding tax. As a result, it is not yet known how the Kuwaiti government will apply the withholding tax procedures included in the treaties.
- (r) 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 beneficial owner of the dividends is a company (other than a group of persons) that holds directly at least 10% of the capital of the company paying the dividends. The 15% rate applies to all other dividends.
- (s) The 0% rate applies if the beneficial owner of the dividends satisfies all of the following conditions:
- It is a company, the capital of which is wholly or partly divided into shares.
  - It is a resident of the other contracting state.
  - It holds directly at least 10% of the capital of the company paying the dividend.
- (t) The 0% rate applies to interest arising in the contracting state and derived by the government of the other contracting state or a political subdivision, local authority or the central bank thereof or a financial institution wholly owned by that government or by a resident of the other contracting state, with respect to a debt claim indirectly financed by the government of that contracting state, a local authority or the central bank thereof or a financial institution wholly owned by the government.
- (u) Royalties may be taxed in the contracting state in which they arise and according to the laws of that state.

- (v) The 0% rate applies to dividends paid by a company that is resident in a contracting state to the government of the other contracting state. The 5% rate applies if the beneficial owner of the dividends is a company that holds directly 25% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
- (w) The 5% rate applies to interest received by banks or similar financial institutions. The 10% rate applies in all other cases. Interest is exempt from tax under certain circumstances.
- (x) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly 25% of the capital of the company paying the dividends. The 15% rate applies to all other dividends.
- (y) The 10% rate applies if the interest is received by a financial institution (including an insurance company). The 15% rate applies in all other cases.
- (z) The 5% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works. The 15% rate applies in all other cases.
- (aa) The 0% rate applies to interest paid with respect to bonds, debentures or similar obligations of the government, political subdivisions, local authorities or the central bank. The 10% rate applies in all other cases.
- (bb) 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 in the company paying the dividends. The 15% rate applies to other dividends.
- (cc) The 7% rate applies to interest paid to banks and other financial institutions. The 10% rate applies in all other cases.
- (dd) Please consult treaty for further details.

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## Montenegro, Republic of

*Please direct all inquiries regarding the Republic of Montenegro to Ivan Rakic (telephone: +381 (11) 209-5804; mobile: +381 (63) 635-690; fax: +381 (11) 209-5891; e-mail: ivan.rakic@yu.ey.com) of the Belgrade, Serbia office.*

*The Union of Serbia and Montenegro ceased to exist on 25 May 2006. The following chapter provides information on taxation in the Republic of Montenegro only.*

### A. At a glance

Corporate Income Tax Rate (%)	9
Capital Gains Tax Rate (%)	9
Branch Tax Rate (%)	9
Withholding Tax (%)	
Dividends	9 (a)
Interest	9 (b)
Royalties from Patents, Know-how, etc.	9 (b)
Capital Gains and Leasing Fees	9 (c)
Consultancy, Market Research and Audit Fees	9 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This tax applies to resident and nonresident legal entities and individuals.
- (b) This tax applies to nonresident legal entities and resident individuals. Interest paid to nonresident individuals is taxed under the Personal Income Tax Law at a rate of 5%. Royalties paid to resident and nonresident individuals are taxed under the Personal Income Tax Law at a rate of 9%.
- (c) This tax applies to nonresident legal entities. Individuals are taxed under the Personal Income Tax Law at a rate of 9%.

### B. Taxes on corporate income and gains

**Corporate income tax.** Companies resident in the Republic of Montenegro (RM) are subject to tax on their worldwide income.

A company is resident in the RM if it is incorporated in the RM or if its central management and control is actually exercised in the RM. Nonresident companies are subject to tax only on their income derived from the RM. Nonresident companies are companies registered in other countries that have a permanent place of business in the RM.

**Rate of corporate income tax.** The rate of corporate income tax in the RM is 9%.

**Tax incentives.** Newly established companies in undeveloped municipalities, engaging in production activities, are exempt from corporate profit tax for a three-year period from the date of the commencement of their business activities.

The corporate profit tax liability of companies that have business units established in undeveloped municipalities that engage in production activities may be reduced proportionally based on the percentage of the business unit's profit in the total profit of the company. This tax relief can be claimed for a three-year period from the date of the incorporation of the business unit.

**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 five years.

**Administration.** The tax year is the calendar year. A company may not elect a different tax year. Companies must file annual tax returns and pay tax due by 31 March of the year following the tax year.

**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 of the tax credit for dividend taxes paid abroad can be carried forward to offset corporate income tax in the following five years. This tax credit applies only to dividends received by companies with a shareholding of 10% or more in the payer for at least one year before the date of submission of the tax return.

A 9% withholding tax is imposed on dividends paid to nonresidents.

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 RM that perform business activities through permanent establishments outside the RM 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 Montenegrin 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 Montenegrin accounting regulations, subject to certain adjustments for tax purposes.

Taxable income is the positive difference between income and expenses. Dividend income of taxpayers is not included in the tax base if the payer of the dividend is a taxpayer according to the Montenegrin Corporate Profit Tax Law.

Tax-deductible expenses include expenses incurred in performing business activities. Expenses must be documented. Certain expenses, such as depreciation (see *Tax depreciation*) and donations, are deductible up to specified limits.

**Inventories.** Inventories must be valued using average prices or the first-in, first-out (FIFO) method.

**Provisions.** Legal entities may claim deductions for 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.
- It can be proved that the claims could not be settled.

Long-term provisions made for renewal of the natural resources, possible costs payable in a guarantee period and expected losses on the basis of court disputes are recognized as expenses in accordance with the local accounting regulations. In addition, long-term provisions made by the banks are recognized as expenses up to the amount determined in the relevant banking regulations.

Severance payments that are calculated but not paid are deductible up to the amount determined in the Labor Law.

**Tax depreciation.** Intangible and fixed assets are divided into five groups, with depreciation and amortization rates prescribed for each group. A ruling classifies assets into the groups. Group I includes real estate.

The straight-line method must be used for Group I, 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	5
II	15
III	20
IV	25
V	30

**Relief for losses.** Tax losses incurred in business operations may be carried forward for five 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 RM 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT), on supplies of goods and services in the RM 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 €18,000 in the preceding 12 months or who expect to have annual turnover greater than the threshold	
Standard rate	17
Lower rate	7
Property tax, on rights in immovable property in the RM, including residential and business buildings, apartments, garages, buildings and rooms for resting and recreation, and other buildings; certain immovable property is exempt; tax credits are available for the dwellings of owners and their immediate families; the amount of tax due is determined by a tax authority's Resolution, which should be issued by 31 May of the year for which the tax is rendered; the tax is payable in two installments, which are due on 30 June and 30 November; tax rate varies depending on the municipality in which the immovable property is located	0.08 to 0.8
Transfer tax; imposed on the transfer of the immovable property located in Montenegro; the tax base equals the market value of the transferred property at the time of acquisition; the acquirer of the property is the taxpayer; the tax is due within 15 days after the date on which the tax authority's Resolution determining the amount of tax due is issued	3
Payroll taxes, on monthly gross salaries	
Tax on income; paid by employee	9
Surtax on salary tax; paid by employer	13/15
Social security contributions (for health and pension/disability funds); paid by	
Employer	9.3
Employee	23.5

## E. Miscellaneous matters

**Foreign-exchange controls.** The official currency in the RM is the euro (€).

Capital transactions (investments), current foreign-exchange transactions and transfers of property to and from the RM are generally free. The only limitation refers to the amount that could be physically brought into or out of the RM (€10,000). Resident legal entities must maintain evidence of their capital and current transactions with nonresident entities and inform the central bank of such transactions during a year by 15 March of the following year.

**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.

## F. Treaty withholding tax rates

Montenegro became an independent state in June 2006. The government has rendered a decision that it will recognize tax treaties signed by the former Union of Serbia and Montenegro and both former Yugoslavias until new tax treaties are signed. The following table lists the withholding tax rates under the treaties of the former Union of Serbia and Montenegro and under the treaties of the former Yugoslavias 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
India (a)	5/15	10	10
Ireland (b)	5/10	10	5/10
Italy	10	10	10
Korea (North)	10	10	10
Kuwait	5/10	10	10
Latvia	5/10	10	5/10
Macedonia	5/15	10	10
Malaysia	10	10	10
Malta	5/10	10	5/10
Moldova	5/15	10	10
Netherlands	5/15	0	10
Norway	15	0	10

	Dividends %	Interest %	Royalties %
Poland	5/15	10	10
Romania	10	10	10
Russian Federation	5/15	10	10
Serbia (c)	10	10	5/10
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
Turkey	5/15	10	10
Ukraine	5/10	10	10
United Kingdom	5/15	10	10
Nontreaty countries	9	9	9

- (a) The application of the treaty with India is currently suspended in Montenegro as a result of India not recognizing the application of the treaty.
- (b) This treaty enters into force on 1 January 2012.
- (c) At the time of writing, the treaty was expected to be ratified by the end of 2011, and the treaty was expected to enter into force on 1 January 2012.

## Morocco

(Country code 212)

### Casablanca

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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 Remuneration for Most Services	10 (e)
Wages and Indemnities Paid to Nonpermanent 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. A reduced rate of 15% applies to small companies with turnover under MAD 3 million, excluding VAT. The Casablanca Finance City regime provides a 10% rate for regional or international head offices.
- (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 if a property attestation (a certificate containing the company's tax number and attesting that the company is the owner of the shares) is delivered by the beneficiary company.
- (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. Effective from 1 January 2011, rental and maintenance of aircraft used for international transport are exempt from this withholding tax.
- (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 (unless a double tax treaty between Morocco and the residence country of the beneficiary provides otherwise)
- 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 unless a provision of a double tax treaty provides otherwise.

**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%. A reduced rate of 15% applies to small companies with turnover under MAD 3 million, excluding VAT. The Casablanca Finance City regime provides a 10% rate for regional or international head offices.

In general, the minimum tax is the greater of MAD 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)
- 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.

For regional or international head offices benefiting from the Casablanca Finance City regime, the minimum tax is 5% of the total operating expenses.

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 applied to the total contract price including the cost of materials, but excluding value-added tax (VAT).

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 cattle-farming enterprises (until 2013), and cooperatives with annual turnover of less than MAD 5 million, excluding VAT. However, these organizations do not benefit from the 100% rebate for dividends and are not exempt for profits on transfers of shares.

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 was subject to certain conditions, but the 2011 Finance Bill eliminated the conditions. The following were the 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 MAD 50 million, excluding VAT.
- 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. This exemption no longer applies to exporters of recovery metals. 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. Management companies of "real estate residences for tourism promotion" also benefit from this measure, under the same conditions. A "real estate residence for tourism promotion" is a residence assimilated to a hotel in which the housing units belong to one or more owners and of which a minimum

percentage of the housing units (fixed by regulations at 70%) is managed by a licensed management company for at least 9 years.

The Casablanca Finance City regime provides to service provider companies a 5-year tax exemption and an 8.75% tax rate after the fifth year for a period of 20 years.

*Permanent reductions.* Mining companies, including those that sell products to export companies, benefit from a reduced corporate income tax rate of 17.5%.

A 15% rate is granted to companies that have turnover of MAD 3 million or less, excluding VAT.

A 10% rate applies to regional or international head offices that benefit from the Casablanca Finance City regime.

Companies established in the area of Tangier benefit from a reduced corporate income tax rate of 17.5% and a 50% reduction in professional tax and local services tax (for details regarding the last two taxes, see Section D). This regime cannot be combined with any other tax benefits.

Effective from 1 January 2011, the corporate income tax rate applicable to companies established in the Tangier area will increase by 2.5% each year until the 2015 fiscal year when the applicable rate will be 30%.

*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 2013.

Companies holding a hydrocarbon exploration and exploitation permit are exempt from corporate income tax for 10 years from the beginning of hydrocarbon regular production.

Subject to certain conditions, real estate developers benefit from a total exemption from corporate income tax and other taxes with respect to construction programs for social housing under agreements entered into with the government. This temporary regime applies from 1 January 2010 through 31 December 2020.

*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. After the five-year period, the standard corporate income tax rate (currently, 30%) applies. The following are the specified areas:

- Al Hoceima
- Berkane
- Boujdour
- Chefchaouen
- Guelmim
- Jerada
- Laâyoune
- Larache

- Nador
- Oued-ed-Dahab
- Oujda-Angad
- Smara
- Tan-Tan
- Taounate
- Taourirt
- Tata
- Taza
- Tétouan

Effective from 1 January 2011, the corporate income tax rate applicable to companies established in the above areas will increase by 2.5% each year until the 2015 fiscal year when the applicable rate will be 30%.

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 per year.

**Capital gains.** Capital gains on the sale of fixed assets are taxed at regular corporate tax rates.

Nonresident companies are taxed on profits derived from sales of unlisted shares of Moroccan companies at a rate of 30%, unless a double tax treaty between Morocco and the residence country of the beneficiary provides otherwise. 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 (see Section E).

**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 corporate income 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.

If the minimum tax does not exceed MAD 1,500, it is fully payable in one installment. Payment of the minimum tax exceeding this amount is made in accordance with the rules applicable to the corporate income tax.

**Dividends.** Dividends are generally subject to a 10% withholding tax. However, withholding tax does not apply to dividends paid to Moroccan companies subject to Moroccan corporate tax if a property attestation is delivered by the beneficiary company. Such companies are also exempt from corporate income tax on the dividends.

**Foreign tax relief.** Foreign tax relief is granted in accordance with the provisions of Morocco's double tax treaties and the Moroccan Tax Code.

### C. Determination of trading income

**General.** The computation of taxable income is based on financial statements prepared according to generally accepted accounting principles, subject to modifications provided in the Moroccan Tax Code.

Business expenses are generally deductible unless specifically excluded by law. The following expenses are not deductible:

- Interest paid on shareholders' loans in excess of the interest rate determined annually by the Ministry of Finance or on the portion of a shareholder's loan exceeding the amount of capital stock that is fully paid up. No interest on shareholders' 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:

- Ten percent of their operating expenses
- 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 following two methods:

- The straight-line method at rates generally used in the sector of the activity.
- A declining-balance method with depreciation computed on the residual value by applying a declining coefficient that ranges from 1.5 to 3 and that is linked to the term of use. The declining-balance method may not be used for cars and buildings.

The following are some of the applicable straight-line rates.

<b>Asset</b>	<b>Rate (%)</b>
Commercial and industrial buildings	4 or 5
Office equipment	10 to 15
Motor vehicles (for vehicles used in tourism, the maximum depreciable value is MAD 300,000 including VAT)	20 to 25
Plant and machinery	10 to 15

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.

Nature of tax	Rate (%)
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	14
Restaurants, hotels, salt, bank and credit operations, petroleum gas, other gaseous hydrocarbon, refined or untreated petroleum and schist oil	10
Utilities (water provided through public distribution network and oil), pharmaceuticals and sugar	7
Professional tax, on gross rental value of the business premises	10 to 30
Local services tax; annual tax on the rental value for professional tax purposes	6.5/10.5
Registration duties, on transfers of real property or businesses	1 to 6
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)	6.4
For illness and pregnancy, on gross monthly remuneration, up to a maximum remuneration of MAD 6,000 a month	8.6
For required medical care	3.5

#### E. Miscellaneous matters

**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 50% 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).

**Mergers and liquidations.** The Moroccan Tax Code provides two types of taxation for mergers, which are the common tax regime and the specific regime.

Under the common tax regime, the absorbed company is subject to tax on all profits and capital gains relating to the merger and on the profits realized between the beginning of the fiscal year and the effective date of the merger.

The specific regime allows deferred taxation of profit related to goodwill and land if certain conditions are met.

The 2010 Finance Bill instituted a temporary regime, which applies from January 2010 through December 2012. In addition to the incentives provided by the specific regime, the temporary regime provides other incentives such as an exemption for profits derived from share transfers at the level of the shareholders. The temporary regime also applies to total scissions of companies.

Liquidations of companies trigger immediate taxation in accordance with the tax rules described above and, if applicable, a 10% withholding tax on liquidation profit called "Boni de liquidation." The "Boni de liquidation" is the balance of assets that remains for shareholders on the liquidation of a company after settlement of all liabilities, and the reimbursement of the share capital and reserves aged more than 10 years.

## F. Treaty withholding tax rates

	Dividends %	Interest %	Royalties %
Austria	5/10 (i)	10	10
Bahrain	5/10 (h)	10	10
Belgium	6.5/10 (j)	10	10
Bulgaria	7/10 (c)	10	10
Canada	15 (e)	15 (e)	5/10
China	10 (e)	10	10
Czech Republic	10 (e)	10	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 (South)	5/10 (f)	10	10
Kuwait	10 (e)	10	10

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Lebanon	5/10 (h)	10	5/10
Luxembourg	10/15 (e)	10	10
Maghreb Arab Union (d)	– (b)	– (b)	– (b)
Malaysia	5/10 (h)	10	10
Malta	6.5/10 (j)	10	10
Netherlands	10/25 (e)	10/25 (e)	10
Norway	15 (e)	10	10
Poland	7/15 (c)(e)	10	10
Portugal	10/15 (e)	12 (e)	10
Romania	15 (e)	10	10
Russian Federation	5/10 (f)	10	10
Senegal	10	10	10
Spain	10/15 (e)	10	5/10
Switzerland	7/15 (c)(e)	10	10
Turkey	7/10 (c)	10	10
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) 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.
- (d) The Maghreb Arab Union countries are Algeria, Libya, Mauritania, Morocco 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. The 10% rate applies to other dividends.
- (i) The 5% 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 10% rate applies to other dividends.
- (j) The 6.5% 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 10% rate applies to other dividends.

Morocco has signed tax treaties with Côte d'Ivoire, Gabon, Greece, Indonesia, Jordan, Latvia, Oman, Pakistan, Qatar, Singapore, Syria, Vietnam and Yemen, but these treaties have not yet been ratified.

## Mozambique

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**A. At a glance**

Corporate Income Tax Rate (%)	32
Capital Gains Tax Rate (%)	32
Branch Tax Rate (%)	32*
Withholding Tax (%)	
Dividends	20
Interest	20
Royalties	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

\* 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%.

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 and for income derived from the assembling and installation of equipment. 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

- Income from the application of capital
- Income from the rendering of any services realized or used in Mozambique

**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 10%, depending on the location of the project
- Tax deductions ranging from 5% to 10% of the taxable income for investments with acquisition of state-of-the-art technology and training of Mozambican employees
- Tax deductions of up to 110% of investments for the construction and rehabilitation of public infrastructure
- Accelerated depreciation of buildings and equipment by increasing the normal rates by 50%

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 with respect to basic infrastructure
- Projects located in Special Economic Zones
- Projects located in Industrial Free Zones
- Manufacturing

Special tax rules apply to manufacturing units that intend to operate under an Industrial Free Zone (IFZ) regime or in a Special Economic Zone. The main requirements for the IFZ regime are that at least 70% of production is exported and that a minimum of 250 workplaces are created. The government establishes the Special Economic Zones, which provide benefits similar to those of IFZs.

**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 30,000, while the maximum amount of such payments is MT 100,000. 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 derived by resident entities 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.
- 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%)
- 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
- 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
- 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 following table 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	75
Social security contributions, on monthly salaries and wages; paid by	
Employer	4
Employee	3
Import duties	2.5 to 25
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. Service agreements with nonresident entities are subject to registration with the central bank.

In general, the repatriation of profits, dividends and 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>
Botswana	10/12/15 (b)	10	10
India	7.5	10	10
Italy	15	10	10
Macau SAR	10	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Mauritius (a)	8/10/15 (b)	8	5
Portugal (a)	15	10	10
South Africa	8/10/15 (b)	8	5
United Arab Emirates (a)	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% (10% under the Botswana treaty) 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% (12% under the Botswana treaty) 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.

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### A. At a glance

Corporate Income Tax Rate (%)	34
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	34
Withholding Tax (%)	
Dividends	10 (a)
Interest	10 (b)
Royalties from Patents, Know-how, etc.	10.2 (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) This withholding tax applies to 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 34% 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 34%. The tax rate for companies that have been awarded manufacturing status is 18% for their first ten years of registration as a manufacturer and 34% 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 hard-rock mining services are taxed at a rate of 37.5%, effective from 1 January 2008. Companies that render diamond mining services are taxed at a rate of 55%. 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 or long-term insurance business 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
- 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. For the first 10 years of operation, the tax rate for registered manufacturers that export all goods manufactured is 3.6%. After the 10-year period, the rate increases to 6.8%.

**Inventories.** 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
- Local supplies of fuel levy goods (petrol and diesel)
- Maize meal, fresh or dried beans, sunflower cooking oil, fried animal fat used for the preparation of food, bread and bread or cake flour, if these items are not served as cooked or prepared food, fresh milk and white or brown sugar
- Medical services and services supplied by hospital

Local public passenger transport, 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.

	Dividends %	Interest %	Royalties %
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) A 10% withholding tax is 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 has signed tax treaties with Bulgaria, Congo (Democratic Republic of) and Liberia, but these treaties have not yet been ratified. 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 (a)
Capital Gains Tax Rate (%)	25 (a)
Branch Tax Rate (%)	25 (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 €200,000 of taxable income. An effective tax rate of 5% is available for income related to certain intellectual property (Innovation Box). For details regarding the Innovation Box, 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 or European Economic Area (EEA) state (excluding Liechtenstein). In addition, this rate is typically reduced under the extensive Dutch treaty network (see Section F), to as low as 0%. Under Dutch domestic law, dividends paid by a Dutch Cooperative, which is a specific legal entity, are not subject to Dutch dividend withholding tax if certain antiabuse requirements are met. A Dutch Cooperative is similar to a Dutch private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*, or BV) but, among other advantages, it offers more flexibility from a legal perspective. For further details, 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 2012, the standard corporate tax rate is 25%. A tax rate of 20% applies to the first €200,000 of taxable income. An effective tax rate of 5% is available for income related to certain intellectual property (IP). For details regarding this IP regime, see *Innovation Box*.

**Innovation Box.** If certain conditions are met, a taxpayer can elect to apply the Innovation Box. The aim of this box is to encourage

innovation and investment in research and development (R&D), including software development. The Innovation Box is the successor of the Patent Box. The Patent Box, which applied from 1 January 2007, was converted into the Innovation Box, as of 1 January 2010.

In the Innovation Box, net income from qualifying intellectual property is effectively taxed at a rate of 5%. The 5% rate applies only to the extent that the net earnings derived from the self-developed intangible assets exceed the development costs. The development costs are deductible at the standard tax rate (see Section A) and form the so-called threshold. The Innovation Box regime can be elected with respect to a particular intangible asset only; it is not required to include all intangibles. The Innovation Box does not impose a limit on the amount of income from intangible assets that can be taxed at the effective 5% rate.

An important condition for application of the Innovation Box is that the taxpayer must have been granted a patent, a breeder's right (this right is granted for newly invented seeds) or an R&D declaration from the Ministry of Economic Affairs, Agriculture and Innovation for an intangible asset created by or for risk and account of the taxpayer. Trademarks, logos, and similar assets do not qualify. Contract R&D arrangements for qualifying intangible assets are allowed. Advance Tax Rulings (ATRs) and Advance Pricing Agreements (APAs) are available (see *Administration*).

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.

**Research and development deduction.** 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. An additional deduction of 40% (for 2012) is available for expenses (excluding wages) incurred for, and investments related to, R&D work for which an R&D Declaration has been obtained from the Ministry of Economic Affairs, Agriculture and Innovation. At the standard tax rate of 25% (see Section A), this results in a net benefit of 10% for 2012.

**Capital gains.** No distinction is made between capital gains and other income. In certain cases, capital gains are exempt (for example, if the participation exemption described in Section C applies) or a rollover is available based on case law or under the reinvestment reserve (see the discussion in *Provisions* in Section C).

**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 authorities within 5 months after the end of the tax year, unless the company applies for an extension (normally, an additional 10 months based on an agreement between the tax advisers and the tax authorities).

Companies must make partial payments of corporate income tax during the year, which are known as preliminary assessments. The

preliminary assessments are based on the expected final assessment. For 2012, assuming the tax year is the calendar year, the assessments are levied according to the following schedule:

- The first preliminary assessment is due on 31 January 2012. 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 2012. 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 (plus any extensions granted). If a higher tax liability is established than that shown in the tax return, interest is charged. If less tax is payable than already paid on preliminary assessments, interest is paid at the same rate on the refund.

Interest is charged from the first day after the end of the tax year. Assuming the tax year is the calendar year, interest on the assessment relating to 2012 runs from 1 January 2013. If tax is refundable, interest is paid from the first day after the end of the tax year. 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 or fails to meet the deadline to file a return. Penalties may apply.

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%.

*Rulings.* Rulings are agreements concluded with the tax authorities with respect to the Dutch tax consequences of transactions or situations involving Dutch taxpayers. Rulings are based on the Dutch tax laws that apply at the time of the request.

For certainty in advance regarding general transfer-pricing matters (see Section E), an Advance Pricing Agreement (APA) can be concluded with the tax authorities. 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 part of transactions with related parties, including transactions involving permanent establishments. The Dutch APA program also allows the use of adjustments for the application of the agreed transfer-pricing methodology on a retrospective basis.

For most other matters, such as the applicability of the participation exemption, the tax consequences of hybrid finance structures or the existence or nonexistence of a permanent establishment in the Netherlands or abroad, an Advance Tax Ruling (ATR) can be concluded.

The benefit of an APA or ATR is that companies have certainty in advance regarding their Dutch tax position, before the investment is made.

The ruling process with the tax authorities may require a pre-filing meeting. In general, rulings are concluded for a period of four or five years, but facts and circumstances may allow for a longer or indefinite term. If the facts on which the APA or ATR was based do not change, in principle, the APA or ATR can be renewed indefinitely. No fees are required to be paid when filing an APA or ATR request with the Dutch tax authorities.

The time required for the total process from concept to agreed ruling depends on many circumstances. However, in general, it takes between 6 to 10 weeks from the date of the filing of the ruling request to obtain the ruling. It is often possible to expedite the process if required from a commercial perspective (for example, merger and acquisition transactions).

**Dividend withholding tax.** The standard withholding tax rate for dividends is 15%. However, several exemptions and reductions, as described below, can apply. Under the extensive Dutch treaty network (see Section F), the Dutch dividend withholding tax rate is typically reduced to a rate as low as 0%. Under the participation exemption (see Section C), dividends paid by resident companies to other resident companies are usually exempt from dividend withholding tax.

Under influence of case law by the European Court of Justice (ECJ), the conditions for application of the dividend withholding tax exemption on dividends paid to EU member state resident investors have been relaxed. Effective from 1 January 2010, the withholding tax exemption is available to EU/EEA member state resident investors (and who are not treated as a resident outside the EU/EEA under a tax treaty between the EU/EEA state and a third state) holding an interest in a Dutch dividend distributing entity that would qualify for participation exemption benefits. For this purpose, the EEA is limited to the countries of Iceland and Norway. The withholding tax exemption does not apply if the foreign shareholder fulfills a similar function as a Netherlands fiscal investment company or tax-exempt investment company.

Under Dutch domestic law, members in a Dutch Cooperative are not subject to Dutch dividend withholding tax if certain antiabuse requirements are met. A Dutch Cooperative is similar to a Dutch BV, but among other advantages, offers more flexibility from a legal perspective.

*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.

- 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.

*Share repurchases.* Publicly listed companies are not required to withhold dividends tax when they repurchase their own shares if certain requirements are met. One of these requirements is that the company must not have increased its share capital in the four years preceding the repurchase. 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 any 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.

**Foreign tax relief.** Under unilateral provisions in the corporation tax act, the Netherlands exempts foreign business profits derived through a permanent establishment, profits from real estate located abroad and certain other types of foreign income from corporation tax. If the income is derived from a treaty country, the exemption applies with consideration of the relevant treaty provisions. If such foreign income is derived from a nontreaty country, no "subject to tax" requirement applies. To the extent that the foreign business income is negative, this amount does not reduce Dutch taxable income unless the foreign business is terminated (object exemption). Certain antiabuse provisions apply for non-active group financing activities conducted abroad.

### 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 related-party interest expense. 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 deemed dividend). Restrictions are imposed on the deductibility of certain related-party interest expense (see Section E).

**Functional currency.** 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.

**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.

**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 (participations). 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 "portfolio investment" (determined through the motive test; see below). A less than 5% direct shareholding may

be a qualifying participation if a related company owns an interest of at least 5% in the same subsidiary. If the shareholding is reduced to less than 5% (for example, 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 "portfolio investment" on a particular date, the Dutch shareholder may no longer benefit from the participation exemption as of such date.

The motive test is applied to determine whether a participation is a "portfolio investment." In general, the motive test is met if the shares in the subsidiary are not merely held for the return that can be expected from normal asset management. In a limited number of specific situations, the participation is deemed to be held as a portfolio investment, which is generally determined based on the function and assets of the subsidiary. However, even if the non-portfolio investment requirement is not met, the Dutch taxpayer may still benefit from the participation exemption if the reasonable tax test or the asset test is met.

The reasonable tax test is satisfied if the direct subsidiary is subject to a profit tax that results in a reasonable levy of profit tax in accordance with Dutch tax standards. Based on the parliamentary history, in principle, the local tax system needs to be compared to the Dutch tax system. The primary elements that are taken into account for this assessment are the tax base and the local statutory corporate income tax rate. In general, a statutory profit tax rate of at least 10% qualifies as a reasonable levy if no significant deviations exist between the local tax system and the Dutch tax system. Such significant deviations include, among others, a tax holiday, a cost-plus tax base with a limited cost base and the absence of limitation provisions with respect to the interest deduction.

The asset test is satisfied if less than half of the assets of the direct subsidiary usually consist of, directly or indirectly, low-taxed "free" portfolio investments on an aggregated basis. The portfolio investments are considered "free" if the investments are not used in the course of the business of the company. Real estate is excluded from the definition of a portfolio investment. As a result, the participation exemption applies to benefits from real estate participations.

Subject to prior approval of the Dutch tax authorities, a taxpayer can apply the participation exemption to the foreign-exchange results relating to financial instruments that hedge the exchange exposure on qualifying participations.

*Hybrid loans.* The participation exemption is generally also available for benefits derived from so-called hybrid loans. These are legal debt instruments that are deemed to function as equity for Dutch tax purposes.

**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.

*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. The local municipality determines annually the WOZ value. 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, unless the accelerated tax depreciation regime mentioned above is applied.

**Groups of companies.** Under the Dutch fiscal unity regime, a group of companies can be treated as one taxpayer for Dutch tax purposes. The fiscal unity regime has the following characteristics:

- To elect a fiscal unity, among other requirements, 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, and if the foreign company is comparable to a Dutch BV or *naamloze vennootschap* (NV).
- A permanent establishment in the Netherlands of a company with its effective management abroad may be included in, or can be the parent of, a fiscal unity.
- 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.
- Intercompany profits may be fully deferred.

*Acquisition interest limitation.* Effective from 1 January 2012, the deduction of interest expense related to the acquisitions of a Dutch company that is subsequently included in a fiscal unity with its Dutch acquirer (or merged) is restricted. In such a transaction, the interest expense incurred by the Dutch acquirer with respect to the acquisition is tax deductible without limitation only if the acquirer has "stand alone" taxable income. If the acquirer does not have sufficient "stand alone" taxable income, limitations to the amount of deductible acquisition interest expense may apply. This is the case if the acquisition interest exceeds an amount of

€1 million and if the fiscal unity has “excess liabilities.” To determine whether the fiscal unity has “excess liabilities,” the amount of outstanding liabilities related to an acquisition, expressed as a percentage of the initial purchase price, is reviewed annually. In the first year, “excess liabilities” are recognized only if more than 60% of the purchase price is financed with (any) debt. This percentage is reduced by 5% per year. Taxpayers should consult their Dutch tax advisers to discuss these rules in more detail. The new restriction is introduced with a grandfathering provision. Under this provision, if the target is included in a fiscal unity with the acquirer before 15 November 2011, or if it was merged before that date, the new limitations do not apply.

**Relief for losses.** Losses of a company may be carried back one year and carried forward nine years.

Restrictions on loss relief apply to holding and financing companies. 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 at least 90% of the 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.

The Corporate Income Tax Act contains specific rules to combat the trade in so-called “loss 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 (for example, the going-concern exception). The company has the burden of proof with respect to the applicability of the exemptions. A similar rule applies to companies with a reinvestment reserve on their balance sheet.

#### **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. Companies that perform financing or licensing activities within a group must bear a certain level of risk with respect to these activities. A safe-harbor test involving a requirement with respect to minimum equity at risk determines whether sufficient risk is involved.

The Netherlands does not impose withholding tax on interest and royalties (see Section A). In addition, dividend withholding tax is typically reduced to 0% (see Section B). Because of the participation exemption (see Section C), a Dutch intermediate company is usually exempt from Dutch corporate tax on dividends from, and capital gains connected with, a foreign shareholding.

**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.* 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 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 in the Dutch Civil Code (in general, comparable to the definition 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.

*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
- 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 is 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 Innovation Box (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 a levy of at least 10% on a tax base determined under Dutch standards 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.

*Hybrid loans.* Interest expense incurred on loans that are deemed to function as equity for Dutch tax purposes is not deductible.

**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.

APAs can be concluded with the Dutch tax authorities with respect to transfer pricing (see Section B).

**F. Treaty withholding tax rates**

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

	<b>Dividends (a)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Albania	0/5 (b)	0	0
Argentina	10 (b)	0	0
Armenia	0/5 (c)	0	0
Aruba	8.3/15 (k)	0	0
Australia	15	0	0
Austria	0/5 (b)(g)	0	0
Azerbaijan	5/10 (q)	0	0
Bahrain	0 (c)	0	0
Bangladesh	10 (c)	0	0
Barbados	0 (c)	0	0
Belarus	0/5 (b)(n)	0	0
Belgium	0/5 (c)(g)	0	0
Bonaire, St. Eustatius and Saba (BES-Islands)	0/15 (h)	0	0
Brazil	15	0	0
Bulgaria	0/5 (b)(g)	0	0
Canada	5 (b)	0	0
China	10	0	0
Croatia	0 (c)	0	0
Curaçao	8.3/15 (k)	0	0
Czech Republic	0 (b)(g)	0	0
Denmark	0 (c)(g)	0	0
Egypt	0 (b)	0	0
Estonia	0/5 (b)(g)	0	0
Finland	0 (e)(g)	0	0
France	0/5 (b)(g)	0	0
Georgia	0/5 (c)(r)	0	0
Germany	0/10 (b)(g)	0	0
Ghana	5 (c)	0	0
Greece	0/5 (b)(g)	0	0
Hong Kong SAR	0/10 (o)	0	0
Hungary	0/5 (b)(g)	0	0
Iceland	0 (c)(g)	0	0
India	10	0	0
Indonesia	10	0	0
Ireland	0 (b)(g)	0	0
Israel	5 (b)	0	0
Italy	0/5/10 (c)(g)	0	0
Japan	0/5 (c)	0	0
Jordan	5 (c)	0	0
Kazakhstan	0/5 (c)	0	0
Korea (South)	10 (b)	0	0
Kuwait	0 (c)	0	0
Latvia	0/5 (b)(g)	0	0
Lithuania	0/5 (b)(g)	0	0
Luxembourg	0/2.5 (b)(g)	0	0
Macedonia	0 (c)	0	0
Malawi	15	0	0
Malaysia	0 (b)	0	0
Malta	0/5 (b)(g)	0	0

	<b>Dividends (a)</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Mexico	5 (c)	0	0
Moldova	0/5 (b)(p)	0	0
Mongolia	0/5 (c)	0	0
Morocco	10 (b)	0	0
New Zealand	15	0	0
Nigeria	12.5 (c)	0	0
Norway	0 (b)(g)	0	0
Oman	0 (c)	0	0
Pakistan	10 (b)	0	0
Panama	0/15 (m)	0	0
Philippines	10 (c)	0	0
Poland	0/5 (c)(g)	0	0
Portugal	0/10 (g)	0	0
Qatar	0 (f)	0	0
Romania	0/5 (c)(g)	0	0
Russian Federation	0/5 (b)	0	0
Saudi Arabia	5 (c)	0	0
Singapore	0 (b)	0	0
Sint Maarten	8.3/15 (k)	0	0
Slovak Republic	0 (b)(g)	0	0
Slovenia	0/5 (c)(g)	0	0
South Africa	5 (c)	0	0
Spain	0/5 (b)(g)	0	0
Sri Lanka	10 (b)	0	0
Suriname	7.5 (b)	0	0
Sweden	0 (b)(g)	0	0
Switzerland	0 (c)	0	0
Taiwan	10	0	0
Thailand	5 (b)	0	0
Tunisia	0 (c)	0	0
Turkey	5 (b)	0	0
Uganda	0/5/15 (t)	0	0
Ukraine	0/5 (d)	0	0
USSR (i)	15	0	0
United Arab Emirates	5 (c)	0	0
United Kingdom	0 (c)(g)	0	0
United States	0/5 (c)(s)	0	0
Uzbekistan	5 (b)	0	0
Venezuela	0 (b)	0	0
Vietnam	5/7/10 (b)(l)	0	0
Yugoslavia (j)	5 (b)	0	0
Zambia	5 (b)	0	0
Zimbabwe	10 (b)	0	0
Nontreaty countries	15	0	0

- (a) The dividend withholding tax rates in this table are based on the lowest available treaty rates.
- (b) 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% of the distributing corporation.
- |            |        |             |        |           |              |
|------------|--------|-------------|--------|-----------|--------------|
| Czech Rep. | 10%    | Pakistan    | 20%    | Thailand  | 10/15/20/25% |
| Greece     | 15/35% | Slovak Rep. | 10%    | Turkey    | 10/15/20%    |
| Japan      | 10/15% | Spain       | 10/15% | Venezuela | 10%          |
| Morocco    | 25%    | Suriname    | 15/20% | Zimbabwe  | 20%          |
- (c) The treaty withholding rate is increased to 15% (or other rate as indicated below) if the recipient is not a corporation owning at least 10% of the distributing corporation.

Bahrain	10%	Oman	10%	Tunisia	20%
Ghana	10%	Saudi Arabia	10%	United Arab Emirates	10%
Japan	10%	South Africa	10%	United Kingdom	10/15%
Kuwait	10%				

- (d) The treaty withholding rate is increased to 15% if the recipient is not a corporation owning at least 20% of the distributing company.
- (e) The treaty withholding rate is increased to 15% if the recipient is not a corporation owning at least 5% of the distributing company.
- (f) The treaty withholding rate is increased to 10% if the recipient is not a corporation owning at least 7.5% of the distributing company.
- (g) A dividend withholding tax exemption is available to EU/EEA member state resident investors (who are not treated as a resident outside the EU/EEA under a tax treaty between the EU/EEA state and a third state) holding an interest in a Dutch dividend distributing entity that would qualify for participation exemption benefits. For this purpose, the EEA is limited to the countries of Iceland and Norway. The withholding tax exemption does not apply if the foreign shareholder fulfills a similar function as a Netherlands fiscal investment company or tax exempt investment company. No minimum holding period applies.
- (h) The 0% rate applies if the recipient of the dividends satisfies all of the following conditions:
- It is a corporation resident in the BES-Islands.
  - It has capital wholly or partly divided into shares.
  - It holds at least 10% of the capital of the payer resident in the European part of the Netherlands.
- (i) The former USSR tax treaty continues to apply to Kyrgyzstan, Tajikistan and Turkmenistan.
- (j) The former Yugoslavia tax treaty continues to apply to Bosnia-Herzegovina, Kosovo, Montenegro and Serbia.
- (k) Dividends paid by a resident of the Netherlands to a resident of Aruba, Curaçao or Sint Maarten are subject to Dutch dividend withholding tax at a rate of 15%. A reduced rate of 8.3% is available if certain requirements are met.
- (l) 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. 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.
- (m) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 15% of the capital of the payer and if certain other conditions are met. Please consult your Dutch tax advisor for further details.
- (n) 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.
- (o) 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 and certain other conditions are met. Please consult your Dutch tax advisor for further details.
- (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 is satisfied:
- The recipient has invested at least US\$300,000 in the payer.
  - 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.
- (q) The 5% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the payer and if the recipient has invested at least €200,000 in the payer.
- (r) The 0% rate applies if the recipient is a company that owns at least 50% of the capital of the payer of the dividends and has invested more than US\$2 million in the capital of the payer of the dividends. The 5% rate applies if the recipient is a company that owns at least 10% of the capital of the payer of the dividends.
- (s) 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 dividends and if other conditions are met. The 5% rate applies if the recipient is a company that holds directly at least 10% of the voting power of the payer of the dividends.

- (t) The 0% rate applies if the recipient is a company owning at least 50% 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%.

The Netherlands is in continuous negotiations with other countries to conclude new tax treaties, or amend existing ones. During 2011, the Netherlands continued discussions with Australia, Belgium, China, Costa Rica, Ethiopia, France, Germany, India, Indonesia, Ireland and New Zealand. In addition, in 2011, the Netherlands contacted Angola, Brazil, Chile, Colombia, the Czech Republic, Poland, Singapore, the Slovak Republic and Spain to begin tax treaty negotiations or renegotiate existing treaties.

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**A. At a glance**

Corporate Income Tax Rate (%)	28 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	28 (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	33 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The 28% rate applies from 1 April 2011 for companies with the standard year-end date of 31 March. For companies with an approved 31 December year-end date, the 28% rate first applies for their income year ending 31 December 2011. The corporate income tax rate was previously 30%.
- (b) This is a final tax. If dividends are fully imputed (see Section B), the rate is reduced to 15% (for cash dividends) or to 0% (for noncash dividends and, effective from 1 February 2010, for cash or noncash dividends if nonresident recipients have direct voting interests of at least 10% or if a tax treaty reduces the New Zealand tax rate below 15%). The rate is also reduced to 15% to the extent that the dividends are fully credited under the dividend withholding payment system or under the conduit tax relief system (both of these systems are being phased out) 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) This is a 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
  - 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) This is a 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) Effective from 1 October 2010, the 33% rate is a default rate if recipients' tax file numbers are not supplied. Individuals may elect rates of 10.5% (if their expected annual income does not exceed NZ\$14,000), 17.5%, 30% or 33%. Effective from 1 April 2011, the basic rate for interest paid to companies is 28%, but companies may elect a 33% rate.

## **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 28% from their 2011-12 income year (previously 30% for the 2008-09 through 2010-11 income years). The 28% rate applies from 1 April 2011 for companies with the standard year-end date of 31 March. For companies with an approved 31 December year-end date, the 28% rate first applies for their income year ending 31 December 2011.

**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 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 (however, this is subject to transitional adjustments for the 2011-12 income year that are designed to reflect the reduction of the corporate income tax rate from 30% to 28%). 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 wholly owned subsidiaries resident in New Zealand are exempt. Dividends received by New Zealand resident companies from nonresident companies are generally exempt. However, as a result of changes applying for taxpayers' income years beginning on or after 1 July 2009, certain dividends received by New Zealand resident companies from nonresident companies are taxable, including the following:

- Dividends that are directly or indirectly deductible overseas
- Dividends on certain fixed-rate shares
- Dividends derived by multi-rate Portfolio Investment Entities (PIEs; see Section E), which were previously called portfolio tax rate entities
- Dividends relating to certain portfolio (less than 10%) investments that are exempt from income attribution under the foreign investment fund regime (see Section E)

*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 based on the current corporate income tax rate. For the 2008-09 through 2010-11 income years, the maximum credit is calculated at 30/70 of the dividend declared. As a result, a dividend of NZ\$70 may have an imputation credit attached of up to NZ\$30. The credit is less than the previous maximum credit of 33/67. However, transitional provisions allowed companies to choose to apply credits that had arisen from tax paid at the previous corporate income tax rate of 33%, up to a maximum

ratio of 33/67 until 31 March 2010. On the reduction of the corporate income tax rate to 28%, the maximum credit is 28/72, but transitional provisions allow companies to continue to apply credits that have arisen from tax paid at the 30% rate up to a maximum ratio of 30/70 until 31 March 2013.

The imputation credits described above may not be used to offset nonresident withholding tax on dividends paid to nonresidents. However, effective from 1 February 2010, they may allow nonresident withholding tax to be reduced to 0% if nonresident recipients hold direct voting interests of at least 10% or if a tax treaty reduces the tax rate below 15%. A New Zealand company may pass on the benefit of such credits to other 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. Effective from 1 February 2010, payment of supplementary dividends can generally be made only to certain holding companies (until 31 March 2011) and to nonresident companies and individuals who hold direct voting interests of less than 10% and who are subject to a tax rate of at least 15% after any tax treaty relief.

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.

*Foreign dividend payments.* The foreign dividend payment system was previously called the dividend withholding payment system. Under the foreign dividend payment system, dividends received by a resident company from a nonresident up to the end of their 2008-09 or 2009-10 income year (depending on their year-end date) were subject to a 30% (33% until the end of the 2007-08 income year) foreign dividend payment to be made by the recipient to the Inland Revenue Department.

Companies with foreign dividend payment credits may pass the benefit of the payments 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 payment system. The unused portion of a foreign dividend payment credit can be refunded to the shareholder, but an excess imputation credit is not refundable.

If a resident company had elected to be a conduit tax relief company, a foreign dividend payment on dividends received from a nonresident could be reduced to the extent that the resident company had nonresident shareholders. The benefit of this conduit tax relief was passed on to the nonresident shareholders through the payment of dividends and the attachment of conduit tax relief credits.

In accordance with changes enacted in October 2009, the foreign dividend payment system and conduit tax relief provisions are being phased out. New Zealand resident companies are not required to make foreign dividend payments to the Inland Revenue Department on dividends received during income years beginning on or after 1 July 2009. It is proposed that companies may continue attaching credits to dividends paid to pass on the benefit of previous foreign dividend payments and conduit tax relief (before the beginning of a company's first income year that starts on or after 1 July 2011).

*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. This rate has not been reduced to align with the reduced corporate income tax rate of 28% or 30% but any excess tax can be used as tax credits during or refunded through the annual income tax return process.

**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 carryforwards 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). Effective from taxpayers' income years beginning on or after 1 July 2009, interest paid on certain debts that are stapled to shares on or after 25 February 2008 may be treated as non-deductible dividends. 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, certain 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 2014 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\$1,300,000 or less and closing inventory of less than NZ\$10,000.

**Depreciation.** The depreciation regime generally allows a deduction for depreciation of property, including certain intangible property, used in the production of assessable income. Depreciation cannot be claimed for income tax purposes on buildings with useful lives estimated by the Commissioner of Inland Revenue to be at least 50 years), effective from taxpayers' 2011-12 income years. Depreciation may continue to be claimed on commercial building fit-outs, certain depreciable land improvements and structures other than 50-year buildings. 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 generally 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 and if they were acquired by 20 May 2010. 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
Chairs (office)	15	16	10	10.5
Computers and software	40	50	30	40
Desks	12	13	8	8.5
Filing cabinets	12	13	8	8.5
Motor vehicles	15	16	10	10.5
	to 40	to 50	to 30	to 40
Photocopiers	33	40	24	30

\* Effective from taxpayers' 2011-12 income years, no tax depreciation can be claimed on buildings with useful lives estimated by the Commissioner to be at least 50 years, regardless of the date of acquisition of the building.

The rates for plant and machinery vary depending on the particular industry and 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. Specific rules have been introduced to provide some deferral and rollover relief with respect to irreparable damage arising from the 2010-11 Canterbury earthquakes, and related insurance recoveries and replacements.

**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.** For the 2008-09 income year only, a 15% research and development (R&D) tax credit was available to entities that carried on business through a fixed place in New Zealand. R&D tax credits were refundable to

claimants with tax losses. In addition, amounts equal to the R&D tax credits were credited to company claimants' imputation (franking) credit accounts, which was an additional advantage for such companies. Claims for the credit may be made on or before 31 March 2012 if the credit had not been previously claimed.

**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 aggregate minimum voting interests 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.** Look-through companies with five or fewer shareholders may elect to be taxed similarly to partnerships. However, reforms enacted following the May 2010 budget restrict shareholders' ability to claim losses, effective from their 2011-12 income years.

#### D. Other significant taxes

The following table 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	15
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 (If benefits are attributable to particular employees, employers may elect to calculate FBT on the attributable benefits at a range of rates between 11.73% and 49.25% for the tax year ending 31 March 2012. 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 42.86% for the tax year ending 31 March 2012. As a further alternative, employers may pay FBT at a rate of 49.25% on attributed benefits and 42.86% on unattributed benefits for the tax year ending 31 March 2012.)	49.25
Accident compensation levy, on gross salaries and wages, paid by	

Nature of tax	Rate (%)
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	0.04 to 9.01
Employee	2.04
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	0.04 to 9.01

### 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 previously did not apply to interests in a CFC that was 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 benefited from a foreign tax exemption or certain other specified relief.

For taxpayers' income years beginning on or after 1 July 2009, the CFC "grey list" exemption is abolished, except with respect to Australian CFCs, and has been replaced by an active income exemption which may apply to CFCs in any overseas jurisdiction. No attribution is required under the CFC rules if passive income is less than 5% of the CFC's or a relevant group's income. If the 5% threshold is exceeded, any attribution is limited to passive income. The rules defining passive income and calculating the percentage of a CFC's passive income in relation to total income are complex.

Certain nondividend repatriations of funds by CFCs to New Zealand were previously 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 was measured at the end of the company's accounting year and was subject to foreign dividend payments for

corporate shareholders or income tax for shareholders who were individuals. These rules are abolished for taxpayers' income years beginning on or after 1 July 2009.

**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.

In October 2010, legislation was introduced in parliament to introduce an "active business" and "active income" exemption for FIF interests in companies of at least 10%. This exemption would replace the grey list country exemption for income years beginning on or after 1 July 2011. An exemption is proposed to be retained for FIF interests of at least 10% in Australian companies. Application of the outbound thin-capitalization rules (see *Debt-to-equity ratios*) is proposed to be extended to residents with interests of at least 10% in FIFs that are exempt from attribution of FIF income. Some changes are also proposed to the allowable methods and choices for calculating FIF income. The proposed legislation is included in the Taxation (International Investment and Remedial Matters) Bill 2010, which had not yet been enacted at the time of writing.

**Portfolio investment entities.** Certain collective investment entities that elect the Portfolio Investment Entity (PIE) regime are not 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.** Previously New Zealand resident companies could 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 had nonresident shareholders. Interest allocation rules limited conduit relief if companies allocated an excessive amount of interest expense to their New Zealand operations in comparison to the amount of interest expense allocated to foreign investments that were granted relief under these rules.

The conduit tax relief regime is being phased out in conjunction with the reform of the branch-equivalent system for CFC interests, effective from taxpayers' income years beginning on or after 1 July 2009.

**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*), 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 generally 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 60% (effective from taxpayers' 2011-12 income years; previously, the ratio was 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
- Associates that are subject to the thin-capitalization regime but are not in the lender's New Zealand group

Specific rules and thresholds apply to registered banks.

As a result of changes enacted in October 2009, for thin-capitalization purposes, certain stapled debt securities and fixed-rate shares are included as debt, while investments in CFCs may be excluded from assets.

For income years beginning on or after 1 July 2009, dividend amounts paid on certain fixed-rate shares may also be added back when interest deductions are limited under the thin-capitalization rules.

Similar thin-capitalization rules are extended to New Zealand residents with income interests in CFCs, effective from their income years beginning on or after 1 July 2009. Under safe harbor rules, thin-capitalization rules will not limit interest deductions on outbound investment if the New Zealand group debt percentage does not exceed 75% and 110% of the worldwide group debt percentage. Additional exemptions with respect to outbound investment may apply in certain circumstances, including situations in which New Zealand group assets (generally excluding CFC investments) are at least 90% of the worldwide group assets or in which external interest (and related foreign-exchange variation) deductions for the New Zealand group do not exceed NZ\$250,000 per year. The apportionment calculation with respect to outbound investment also reduces any adjustment, on a tapering basis, if annual finance costs are between NZ\$1 million and NZ\$2 million and will eliminate any adjustment if annual finance costs are below NZ\$1 million.

For income years beginning on or after 1 July 2011, it is proposed that the above rules be extended to New Zealand residents with interests in FIFs that are at least 10% and that are subject to the new “active income” or Australian exemptions from FIF income attribution. This proposal is included in the Taxation (International Taxation and Remedial Matters) Bill 2010. At the time of writing, this proposal had not yet been enacted.

## 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	0/5/15 (i)	10 (j)	5
Austria	15	10 (a)	10
Belgium	15	10	10
Canada	15	15	15
Chile	15	15 (e)	5 (h)
China	15	10 (a)	10
Czech Republic	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
Hong Kong SAR (k)	0/5/15 (i)	10 (j)	5
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 (South)	15	10 (a)	10
Malaysia	15	15	15
Mexico	0/5/15 (p)	10 (a)	10
Netherlands	15	10 (a)	10
Norway	15	10 (a)	10
Philippines	15	10	15
Poland	15	10	10
Russian Federation	15	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Singapore	5/15 (l)	10 (m)	5
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 (f)	10/15 (g)
Turkey (n)	5/15 (o)	10/15 (c)	10
United Arab Emirates	15	10 (a)	10
United Kingdom	15	10 (a)	10
United States	0/5/15 (i)	10 (j)	5
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) The rate is reduced to 10% for bank interest. Interest paid to certain government bodies or central banks may be exempt.
- (d) See applicable footnotes to Section A.
- (e) The rate is 10% for interest paid to banks and insurance companies.
- (f) 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.
- (g) 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.
- (h) In August 2011, this rate was reduced from 10% with retrospective effect from 1 May 2010.
- (i) The rate may be reduced to 5% or 0% for company shareholders, depending on their level of ownership and certain other criteria.
- (j) No tax applies to interest paid to government bodies or to unrelated financial institutions in certain circumstances.
- (k) The treaty with the Hong Kong SAR was signed on 1 December 2010, but is not yet in force.
- (l) The rate may be reduced to 5% for dividends paid to companies that have an interest of at least 10% in the payer.
- (m) Interest paid to certain government institutions is exempt.
- (n) The treaty with Turkey entered into force on 28 July 2011 and applies to New Zealand withholding taxes, effective from 1 January 2012.
- (o) The rate may be reduced to 5% if the dividends are paid to companies that have an interest of at least 25% in the payer and if the dividends are exempt in the recipient's country.
- (p) The rate may be reduced to 5% or 0% for company shareholders, depending on their level of ownership and certain other criteria. The reduced rates were announced in August 2011 and apply retrospectively, effective from 1 May 2010.

## Nicaragua

(Country code 505)

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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 (%) (b)	
Dividends	10 (c)
Interest	10
Royalties from Patents, Know-how, etc.	21
Payments for Movies, Films, Radio and Television	9
Income Derived from Real Estate (d)	
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) On the sale of movable or immovable assets that are subject to registration with any government institution (for example, real estate), the seller is subject to a withholding tax, based on the progressive income tax rate table. The withholding tax can be applied against the final income tax liability of the seller (that is, for purposes of the final 30% income tax).
- (b) Withholding taxes apply to nonresident companies and individuals. The withholding tax rates are generally 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.
- (c) Under a recent amendment to the Equity Tax Law, effective from the 2010 fiscal year, the 10% rate applies to dividends paid to resident and nonresident companies and individuals.
- (d) Income derived from real estate includes leases and subleases, and any other benefits resulting from ownership of 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 performed or with effects in Nicaragua, regardless of whether the service was rendered abroad or in Nicaragua
- 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 are subject to tax on their Nicaraguan-source income, which equals the higher of the following:

- 30% of net taxable income
- 1% of gross taxable income (income subject to withholding at source is not included in the tax base)

Certain exceptions may be stated in the law.

**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
- 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 for purposes of income tax equal to 1% of their monthly gross income. The advance payments are applied to the annual income tax liability. In addition, excise tax withholding agents and taxpayers engaged in the sale or importation of raw materials or manufactured materials for purposes of the transformation of certain products, such as alcoholic beverages, cigarettes and oil, must make monthly advance payments equal to 30% of their monthly earnings. The advance payments are applied to the annual income tax liability.

**Dividends.** A 10% withholding tax is imposed on dividends paid to resident and nonresident individuals and business entities.

**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 calculated in accordance with generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS), 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 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 taxable

at the normal corporate income tax rate of 30%. The following are the applicable percentages for calculating imputed income.

Type of income	Percentage (%)
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 lower of the acquisition cost or market price. 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 an allowance for doubtful accounts. To deduct a percentage in excess of 1%, companies must satisfy the requirements set forth in Article 28 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 in Nicaragua.

**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.

Asset	Rate (%)
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

<b>Asset</b>	<b>Rate (%)</b>
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 recorded 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 following table 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)	18

#### **E. Foreign-exchange controls**

The Nicaraguan currency is the córdoba (C\$). As of 20 December 2011, the exchange rate for the córdoba against the U.S. dollar was C\$22.9429 = US\$1.

No restrictions apply to foreign-trade operations or to foreign-currency transactions.

#### **F. Tax treaties**

Nicaragua has not entered into any income tax treaties with other foreign countries.

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**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 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 NGN 1 million.

*Tax holidays.* Limited liability companies registered in Nigeria may apply for pioneer status, which is granted to companies in industries that are considered vital to Nigeria's economic development. A company with pioneer status is granted a tax holiday of up to three years, with a possible extension for two years.

Approved enterprises operating in export free-trade zones are exempt from all federal, state and local government taxes, levies and rates. New export-oriented companies located outside free-trade zones may qualify for a three-year tax holiday if they satisfy certain conditions. Under the Companies Income Tax (Amendment) Act of 2007, the exempt profit list also includes the profit of a company established in an Export-Processing Zone (EPZ) or Free-Trade Zone (FTZ) that exports 100% of its production.

New companies engaged in the mining of solid minerals also benefit from a tax holiday during their first three years of operations. Under the Mining and Minerals Act 2007, the tax holiday can be extended for two years.

*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 three-year tax holiday, which is renewable for an additional two years after the tax holiday expires if they are performing satisfactorily. 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.

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
- 0.25% of turnover, up to NGN 500,000

The company then adds 0.125% of turnover exceeding NGN 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*). Taxable interest income includes interest on all time deposits with banks and on savings passbook accounts of NGN 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
- 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.

Dividends distributed from pioneer profit (see *Rates of corporate tax*) or from after-tax petroleum profit are exempt from tax.

### **Administration**

*Tax authority.* The Federal Inland Revenue Service (Establishment) Act, which was enacted in 2007, established the Federal Inland Revenue Service (FIRS). The FIRS is responsible for assessing, collecting and accounting for tax revenue accruable to the federal government of Nigeria.

*Filing and tax payment.* The FIRS 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 FIRS within six months after the end of its accounting year or within 18 months after its date of incorporation. A penalty of NGN 25,000 is imposed for the first month of lateness and NGN 5,000 for each subsequent month.

All companies must file self-assessment forms and pay their tax liability when they file their tax returns. Because all companies are now required to file self-assessment forms, the incentive bonus that was granted to companies under the Companies Income Tax Act has been abolished. Companies may apply to FIRS 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 FIRS. These companies may be required to pay their tax liability within two months after the date of service of the assessment notice.

A 10% penalty and interest at the prevailing bank lending rate are imposed for late payment of assessed tax.

*Tax refunds.* The reforms to the tax system in Nigeria included the introduction of a tax refund system. After auditing a company's documents, the FIRS determines whether an overpayment was made.

*Advance tax on dividends.* A company planning to distribute dividends must first pay tax on the taxable profits at the corporate income tax rate to ensure that the dividends are paid with after-tax profits. This 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 (that is, local generally accepted accounting principles [GAAP] or International Financial Reporting Standards [IFRS]). 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
- Donations made to public bodies and institutions not approved by the government
- Subscriptions to social organizations

Limitations apply to the deductibility of the following:

- Entertainment expenses
- Donations to approved bodies and institutions
- Management fees
- Contributions to the National Pension Fund Scheme

**Inventory.** The tax law does not prescribe any basis for the valuation of inventory, provided a method is used consistently from year to year. However, subject to certain exceptions stated in the Statement of Accounting Standards issued by the Financial Reporting Council (formerly Nigerian Accounting Standards Board), stocks must be valued at the lower of cost or net realizable value. The last-in, first-out (LIFO) method is discouraged.

#### **Tax depreciation (capital allowances)**

*Initial and annual allowances.* Annual allowances are granted under the straight-line method. The company deducts the initial allowance from the asset's cost once in the life of an asset and then applies the annual allowance rate to 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

Qualifying expenditure	Initial allowance (%)	Annual allowance (%)
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.

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%
- Tared 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]*) at the same time.

Companies engaged in research and development activities may claim a tax credit of 20% of their qualifying capital expenditure.

**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. No provisions exist for filing consolidated returns or offsetting losses and capital allowances 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 services performed by professionals	5
Education tax, on assessable income; the tax is deductible for purposes of the petroleum profits tax	2

Nature of tax	Rate (%)
Pension contributions, on monthly gross salary (for pension purposes, gross salary consists of basic pay, 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 NGN 100 million or more	1

## E. Miscellaneous matters

**Foreign-exchange controls.** Foreign investors that intend to set up businesses in Nigeria 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 dividends to be remitted. 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 underlying agreements by 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 (NGN), 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 FIRS 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 purposely 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
China	7.5	7.5	7.5
Czech Republic	7.5	7.5	7.5
France	7.5	7.5	7.5
Netherlands	7.5	7.5	7.5
Pakistan	7.5	7.5	7.5
Romania	7.5	7.5	7.5
South Africa	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 and Poland, but these treaties have not yet been ratified.

Nigeria has begun tax treaty negotiations with Algeria, Mauritius, Tunisia and Yugoslavia.

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## Northern Mariana Islands, Commonwealth of the

(Country code 1)

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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)

- (a) 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.
- (b) Imposed on payments to nonresidents. See Section E.
- (c) 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.
- (d) 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.
- (e) 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
- 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 total gross income %
Exceeding \$	Not exceeding \$	
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 following table 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 \$110,100 (for 2012); paid by	
Employer	7.65%
Employee	7.65%

Nature of tax	Rate
Wages in excess of \$110,100 (for 2012); 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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# Norway

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*Unless otherwise indicated, the rates and thresholds stated in the chapter apply to 2011 income. Certain proposed tax measures for 2012 are also mentioned in the chapter. Changes with respect to the taxation of 2012 income may be introduced with retroactive effect until 31 December 2012.*

**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

(a) This tax applies to dividends paid to nonresident shareholders. Dividends paid to corporate shareholders resident and really established in member states of the European Economic Area (EEA) agreement (including the European Union [EU], Iceland and Liechtenstein) are exempt from withholding tax.

(b) See Section C.

**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 its central management and control are effectively exercised in Norway.

**Rates of corporate tax.** For 2011, the corporate tax rate is 28%. It is proposed that the rate remain the same for 2012.

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. Under the shipping tax regime, profits derived from shipping activities are exempt from income tax. However, 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. For 2011, this tax exemption is limited to 97% of the capital gains. Under a proposal, effective from January 1, 2012, capital gains derived from the sale of shares in limited liability companies, partnerships and certain other enterprises that are qualifying companies under the tax exemption system will be completely exempt from tax. The amendment will apply regardless of whether the exempted capital gain is derived from a Norwegian or a qualifying non-Norwegian company.

The exemption applies regardless of the ownership participation or holding period if the shares are in a company resident in another EEA member state. (The EEA includes the EU, Iceland, Liechtenstein and Norway.) However, if the EEA country is regarded as a low-tax jurisdiction, a condition for the exemption is that the EEA resident company is really established in its home country. The exemption does not apply to capital gains on the alienation of shares in the following companies:

- Companies resident outside the EEA in low-tax jurisdictions, as defined in the Norwegian tax law regarding controlled foreign companies (CFCs; see Section E)
- Companies resident outside the 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 basically eliminated to the same extent that a gain would be exempt from tax.

The exit from Norwegian tax jurisdiction of goods, merchandise, intellectual property, business assets and other items triggers capital gains taxation as if such items were sold at the fair market price.

**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 (normally October). Tax is paid in three installments. The first two are paid on 15 February and 15 April, respectively, each 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. Interest is charged on residual tax.

**Dividends.** An exemption regime with respect to dividends on shares is available to companies. The tax exemption is limited to 97% of the dividends. However, under a proposal, effective from January 1, 2012, dividends from Norwegian and qualifying companies in the EEA will be completely exempt from tax.

The tax exemption applies regardless of the ownership participation or holding period if the payer of the dividends is a resident in an EEA member state. However, if the EEA country is regarded as a low-tax jurisdiction, a condition for the 97% exemption is that the EEA resident company be really established in its home country and, to qualify for the 100% exemption, Norway and the EEA country must have entered into a treaty containing exchange-of-information provisions.

The exemption does not apply to dividends paid by the following companies:

- Companies resident outside the EEA in low-tax jurisdictions as defined in the Norwegian tax law regarding CFCs (see Section E)
- Other companies resident outside the 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 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 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 EEA resident company be really established in 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. Under a proposal, effective from 2012, this correction income tax system will be abolished.

**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. Separate limitations must be calculated according to the Norwegian tax treatment of the following three different categories of foreign-source income:

- Income derived from low-tax jurisdictions and income taxable under the CFC rules
- Income from petroleum production in foreign countries
- Other 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 10 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 and industrial installations, hotels, rooming houses, restaurants and certain other structures	
Useful life of 20 years or more	4
Useful life of less than 20 years	10
I Office buildings	2
J Technical installations in buildings	10

Assets in groups A, B, C and D are depreciated as whole units, while assets in groups E, F, G, H, I and J 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, I and J) 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 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, in Norway	
General rate	25
Articles of food	15
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	11
Pensioners and persons under 17 years old	3

#### E. Miscellaneous matters

**Antiavoidance legislation.** Based on general antiavoidance principles, substance prevails over form. The tax authorities may disregard transactions or structures if the dominant motive is to save taxes and if the tax effects of entering into the transaction or structure is regarded as disloyal to the tax system.

**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. Based on general antiavoidance principles, the tax authorities may deny an interest deduction on a case-by-case basis if they find that the equity of the company is not sufficient. Effective from 1 January 2007, thin-capitalization rules within the petroleum tax sector were 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
- A CFC resident in an EEA member country if such CFC is really established in its home country and if Norway and the home country have entered into a treaty containing exchange-of-information provisions

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.

**Transfer pricing.** Norwegian law allows the tax authorities to impute arm's length prices if transactions between related parties are not considered to be at arm's length.

As an attachment to the annual tax return, Norwegian companies and Norwegian permanent establishments must report summary information about transactions with affiliated companies.

Norwegian companies and Norwegian permanent establishments must prepare and maintain written documentation describing certain transactions with related parties. To avoid a deemed tax assessment, such documentation must be presented to the tax authorities no later than 45 days after it has been requested. The statutory limitation for providing such documentation is 10 years.

Companies belonging to a group of companies with less than 250 employees may be exempted from the documentation requirement if the group has sales revenue of less than NOK 400 million or a balance sheet total of less than NOK 350 million. The exemption does not apply if the Norwegian entity has transactions with related parties located in countries from which Norwegian tax authorities cannot claim exchange of information under a treaty. The exemption also does not apply to companies subject to tax under the Norwegian Petroleum Tax Act.

## 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 (a)	
	Normal rate	Reduced rate
	%	%
Albania	15	5 (c)
Argentina	15	10 (c)
Australia	15	0/5 (d)(o)
Austria (a)	15	0 (p)
Azerbaijan	15	10 (k)
Bangladesh	15	10 (d)
Barbados	15	5 (d)
Belgium (a)	15	5 (c)

	Dividends (a)	
	Normal rate	Reduced rate
	%	%
Benin	20	—
Bosnia-Herzegovina (f)	15	—
Brazil	25	—
Bulgaria	15	—
Canada	15	5 (d)
Chile	15	5 (c)
China (n)	15	—
Côte d'Ivoire	15	—
Croatia (f)	15	—
Cyprus (a)(b)	5	0 (g)
Czechoslovakia (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)
Faroe 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	—
Iceland (a)		
(Nordic Treaty)	15	0 (d)
India (s)	10	—
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 (South)	15	—
Latvia (a)	15	5 (c)
Liechtenstein (a)	25	0 (l)
Lithuania (a)	15	5 (c)
Luxembourg (a)	15	5 (c)
Macedonia	15	10 (c)
Malawi (b)	5	0 (g)
Malaysia (b)	0	—
Malta (a)(b)	15	—
Mexico	15	0 (c)
Montenegro (f)	15	—
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)

	Dividends (a)	
	Normal rate	Reduced rate
	%	%
Poland (a)	15	0 (d)
Portugal (a)(b)	15	10 (c)
Qatar	15	5 (d)
Romania	10	—
Russian Federation	10	—
Senegal	16	—
Serbia (f)	15	—
Sierra Leone	5	0 (g)
Singapore (b)	15	5 (c)
Slovenia (f)	15	—
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	15	0 (d)
Trinidad and Tobago	20	10 (c)
Tunisia	20	—
Turkey	15	5 (q)
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 EEA member states are exempt from withholding tax if the EEA resident company is really established in 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 Bosnia-Herzegovina (effective from 2009), Croatia, and Serbia. Norway had honored the suspended Yugoslavia treaty with respect to the Union of Serbia and Montenegro based on an exchange of notes. However, when the Union of Serbia and Montenegro was dissolved on 3 June 2006, the Norwegian Ministry of Foreign Affairs considered Serbia to be the successor state. Accordingly, the tax treaty applied to Serbia only. Based on an exchange of notes on 31 October 2011, the Yugoslavia tax treaty also applies to Montenegro, effective from 3 June 2006.
- (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.
  - 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.
- (n) Hong Kong and Macau are not covered by the China treaty.
- (o) The rate is 0% if the corporate recipient of the dividends owns at least 80% of the voting power in the distributing company and if certain other criteria are met.
- (p) The 0% rate applies if the recipient is a company.
- (q) The treaty withholding rate is increased if the recipient is not a company owning at least 20% of the distributing company.
- (r) The treaty withholding rate is increased if the recipient is not a company owning at least 15% of the distributing company.
- (s) These are the rates under a new tax treaty between Norway and India, which entered into force on 20 December 2011. The treaty is effective in Norway from 1 January 2012 and in India from 1 April 2012.

Norway is currently negotiating or renegotiating tax treaties with Austria, Barbados, Belgium, Cyprus, Egypt, Georgia, Germany, Iran, Italy, Latvia, Malawi, Malaysia, Malta, the Netherlands, Portugal, Singapore, South Africa, the United Kingdom and the United States.

Norway has entered into exchange-of-information tax treaties with Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Guernsey, the Isle of Man, Jersey, the Marshall Islands, Monaco, St. Christopher (St. Kitts) and Nevis, St. Vincent and the Grenadines, San Marino and the Turks and Caicos Islands. In addition, Norway is currently negotiating such treaties with Bahrain, Botswana, Brunei Darussalam, the Cook Islands, Costa Rica, Dominica, Grenada, Guatemala, Liberia, Liechtenstein, the Macau SAR, Mauritius, Montserrat, St. Lucia, Samoa, Seychelles, Uruguay and Vanuatu.

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*A new tax law, which is effective from the tax year beginning on 1 January 2010, was published in the Official Gazette on 1 June 2009. At the time of writing, the Executive Regulations had not yet been published. Consequently, readers should obtain updated information before engaging in transactions.*

**A. At a glance**

Corporate Income Tax Rate (%)	12 (a)
Capital Gains Tax Rate (%)	12
Branch Tax Rate (%)	12
Withholding Tax (%)	10 (b)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (c)

- (a) See Section B.  
 (b) This tax is imposed on certain payments to foreign persons that do not have a permanent establishment in Oman. Companies or permanent establishments in Oman that pay these items must deduct tax at source and remit it to the Secretary General of Taxation (for a listing of these items, see Section B).  
 (c) See Section C.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Companies, which include Omani companies, partnerships, joint ventures and sole proprietorships, and permanent establishments of foreign companies are subject to Omani income tax. A permanent establishment is defined in the law. In addition, a permanent establishment is created for a foreign person providing consultancy or other services in Oman through employees or designated agents for periods of not less than 90 days, in aggregate, in any 12-month period.

Omani companies and Omani sole proprietorships are subject to tax on overseas income (income accrued from a source outside Oman). However, a foreign tax credit limited to Oman's tax rate of 12% is available against the tax payable in Oman.

**Rates of corporate income tax.** Companies registered in Oman, regardless of the extent of foreign participation, and permanent

establishments of foreign companies are subject to tax at a rate of 0% on their first RO 30,000 of taxable income, and at a rate of 12% on their taxable income in excess of RO 30,000.

Oil exploration and production companies are taxed at a rate of 55% and are usually covered by special rules contained in 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. Omani companies and sole proprietorships engaged in shipping are exempt from tax.

Income derived by investment funds established in Oman and by funds established outside Oman dealing in Omani securities listed in the Muscat Securities Market (MSM) is exempt from tax. These exemptions are for indefinite periods.

Tax holidays are available to companies engaged in manufacturing, mining, exports, operating of hotels and tourist villages, farm and animal products processing, fishing and fish processing, higher education, private schools and nurseries, private hospitals, teaching and training institutions in education and medical care fields. The exemption for these categories of companies is available for five years but may be renewed for a maximum period of an additional five years.

No income can be exempt from tax unless provided by a law or Royal Decree.

**Capital gains.** No special rules apply to capital gains. Capital gains are taxed as part of regular business income at the rates set out in *Rates of corporate income tax*.

The tax law provides that profits and gains derived from disposals of all assets, including disposals of goodwill, trade names or trademarks with respect to all or part of a business, are included as deemed income.

Gains derived from the sale of investments and securities listed on the MSM are exempt from tax.

**Withholding tax.** Withholding tax at a rate of 10% of gross payments is imposed on certain gross payments made to foreign companies, including the following:

- Royalties (see below)
- Consideration for research and development
- Management fees
- Consideration for the use of or right to use computer software

Entities in Oman, including permanent establishments, are responsible for deducting and remitting tax to the government. The tax is final. Foreign persons do not have any further filing or other obligations with respect to such income.

If a foreign company has a permanent establishment in Oman, but the permanent establishment in Oman is unconnected to the receipt of income that is subject to withholding tax, withholding tax applies to such payments.

Royalties include payments for the use of or right to use software, intellectual property rights, patents, trademarks, drawings, equipment rentals, consideration for information concerning industrial, commercial or scientific experience, and concessions involving minerals.

### **Administration**

*General.* A taxpayer is required to register with the tax department by filing a Form for Declaration of Business Particulars within a period of 3 months after the date of incorporation or commencement of activities. Any changes to the registration information must be communicated within two months. The accounting period begins on the date of commencement of business for joint ventures and permanent establishments. For companies, the start date is the date of registration or incorporation. The first accounting period may be less than 12 months but cannot exceed 18 months. The accounting period may be changed with the approval of the Secretary General for Taxation.

The books of account are required to be maintained for a period of 10 years. Permission is required for maintaining books of accounts in a foreign currency. In such a case, income must be converted at exchange rates prevailing on the last day of the accounting year. The accrual method of accounting must be used.

The term "Principal Officer" is defined for various entities. If a permanent establishment carries on an activity in Oman through a dependent agent, the agent is treated as Principal Officer. If a sole proprietor or owner of a permanent establishment is outside Oman, the individual or permanent establishment must designate a Principal Officer to comply with the obligations under the law. Such Principal Officer may not be absent from Oman for more than 90 days in a tax year.

Partners of joint ventures are jointly and severally liable for taxes of the joint venture.

*Returns.* Provisional returns of income must be filed within three months after the year-end. A final return of income, together with audited financial statements, must be filed within six months after the end of the accounting year.

*Assessments.* Assessments must be issued within five years from the end of the year in which tax returns are filed. If no assessment is issued within a period of five years, such assessments are deemed to have been issued (that is, tax returns are accepted as filed).

Corrections of assessments as a result of obvious errors are allowed. Such corrections must be made within five years after the year of issuance of the original assessment.

If a tax return is not submitted for a tax year, the time limit for making an assessment is 10 years from the end of the tax year for which the tax return is due.

Assessed tax, reduced by tax already paid, must be paid within 30 days from the date of issuance of the assessment. A delay results in a delay fine of 1% per month on taxes due for the period of delay. If a refund is assessed, the refund must be claimed within five years after the date of assessment.

Assessments are made with respect to withholding tax.

*Statutory periods of limitation.* For the period of limitation related to assessments, see *Assessments*.

The government's right to collect taxes expires after seven years from the date taxes became due and payable, unless the tax authority initiates action to recover taxes.

*Appellate processes.* An objection against the assessment order must be filed with the Secretary General for Taxation. Other appellate procedures are an appeal with the Tax Committee, a tax suit filed in the primary court, an appeal to the appellate court, and finally a case before the Supreme Court.

The objection against an assessment must be filed within 45 days from the date of serving of the assessment order. An appeal must be submitted within 45 days from the date of the decision on the objection or the date of expiration of the specified period for deciding on the objection if no decision is issued.

The time limit for consideration of the objection is increased from three to five months, with an extension of an additional five months (previously three months). If no decision is issued, an implied rejection of the objection is deemed to occur.

A taxpayer can seek extension of time for the payment of disputed tax. However, the undisputed tax must be paid within 30 days after the date of assessment.

**Dividends.** Dividends received by Omani companies, permanent establishments of foreign companies or Omani sole proprietors from Omani companies are exempt from tax.

**Foreign tax relief.** A foreign tax credit limited to Oman's tax rate of 12% is available against the tax payable in Oman on overseas income of Omani companies and sole proprietors.

### **C. Determination of trading income**

**General.** Tax is levied on the taxable income earned by Omani companies, permanent establishments of foreign companies and Omani sole proprietors. Financial accounts must be prepared using the accrual basis of accounting.

Gains on the disposal of goodwill and trademarks are deemed to be taxable income.

Income arising before registration or incorporation is considered to be taxable income in the first year after registration. The market value of assets received in exchange for other assets is considered to be the disposal value, suggesting that mergers may give rise to a taxable event.

Other types of income such as payments on insurance claims, debts recovered in subsequent periods, balancing charges and reversals of liabilities, are treated as income subject to tax.

Expenses are deductible only if they are incurred wholly and exclusively for the purpose of production of gross income. If only a portion of the expense is incurred for the purpose of income generation, the proportionate expense attributable to the income generated is allowed as a deduction. Expenses incurred before

registration, incorporation or the commencement of business are deemed to be incurred on the day on which business commences and are deductible in the first year of commencement of operations.

Expenses that are incurred in generating tax-exempt income are not allowed as deductions.

Special rules apply to allowances, such as depreciation, bad debts, donations, remuneration of shareholders, proprietors and directors, rent, head-office overhead allocated to branches and sponsorship fees. Exchange differences relating to head-office or related-party balances are normally disregarded.

Foreign taxes are not deductible for tax purposes. However, foreign taxes can be set off against taxes due on the same income in Oman (see Section B).

**Inventories.** The tax law does not stipulate a required method of accounting for inventories. In general, inventories 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. Provisions to reduce the value to net realizable value are not allowed for tax purposes.

**Provisions.** Provisions for loan losses are deductible for tax purposes for banks and other financial companies regulated by the central bank. Provisions for unexpired risks, unsettled claims and contributions to contingency funds are deductible for tax purposes for insurance companies. To be allowed as deductions, the amounts of the provisions referred to above must be in accordance with guidelines issued by the regulatory bodies.

**Tax depreciation.** Depreciation of assets other than buildings must be calculated using the pooling (or block) of assets method. Each pool's asset base is calculated with reference to the written-down value plus additions minus sale proceeds from disposals.

The straight-line depreciation method applies to buildings.

The following annual depreciation rates are set out under the tax law.

Assets	Rate (%)
Permanent buildings (selected materials)	4
Building (other than selected materials)	15
Quays, jetties, pipelines, road, railways	10
Ships and aircraft	15
Drilling rigs	10
Other machinery and equipment	15
Tractors, cranes, and other heavy equipment	33½
Computers, vehicles, self-propelling machines	33½
Furniture and fixtures (including computer software and copyrights)	33½
Hospital buildings and educational establishments	100

The rate for intangible assets is determined by the Secretary General of Taxation.

**Relief for losses.** Losses may be carried forward for five years. The losses of an earlier year must be set off first before using losses of a later year.

Companies that are exempt from tax because they are carrying on the activities set out in Section B may carry forward net losses incurred during the first five years of exemption for an indefinite period.

No carryback of losses is permitted.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate
Social security contributions, on basic salary of Omani employees only	
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.** If a company carries out a transaction with a related party that is intended 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.

For transactions between related parties that are not at arm's length, certain arrangements and terms may be ignored by the tax authorities if such arrangements or terms result in lower taxable income or greater losses.

The tax authorities may make adjustments if the principal purpose of a transaction is to avoid taxation even if the transaction is between unrelated parties.

**Thin-capitalization rules.** Thin-capitalization rules will be imposed based on the Executive Regulations, which will be issued in due course.

**Transfer pricing.** The tax law has introduced the concept of transfer pricing. It seeks to restrict any measures that may be taken by related parties for the avoidance of tax through transactions entered into between them.

**Others.** Oman does not have any rules relating to foreign-exchange controls or controlled foreign companies.

#### F. Tax treaties

Oman has entered into double tax treaties with Algeria, Belgium, Brunei Darussalam, Canada, China, France, India, Italy, Korea (South), Lebanon, Mauritius, Moldova, Pakistan, Seychelles, Singapore, South Africa, Sudan, Syria, Thailand, Tunisia, the United Kingdom, Vietnam and Yemen.

Oman has signed double tax treaties with Egypt, Iran, Morocco, the Netherlands, the Russian Federation and Uzbekistan, but these treaties are not yet in force. Oman has signed double tax treaties

with Bangladesh, Germany, Kazakhstan and Malta, but these treaties have not yet been ratified.

Oman has also entered into treaties with several countries with respect to the avoidance of double taxation on income generated from international air transport.

Oman recently ratified a free trade agreement with the United States. The Gulf Cooperation Council (GCC) countries have entered into a free trade agreement with Singapore but this agreement has not yet been ratified by Oman.

Under Omani domestic law, withholding tax is not imposed on dividends or interest. Under the France and Mauritius treaties, no withholding tax is imposed on royalties paid to companies resident in those countries, subject to the satisfaction of certain conditions.

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**A. At a glance**

Corporate Income Tax Rate (%)	35
Capital Gains Tax Rate (%)	7.5/10/35 (a)
Branch Tax Rate (%)	35
Withholding Tax (%) (b)	
Dividends	7.5/10/20 (c)
Interest	10 (d)

Royalties from Patents, Know-how, etc.	15/20 (e)
Fees for Technical Services	6/15 (f)
Branch Remittance Tax	10 (g)
Net Operating Losses (Years)	
Carryback	0
Carryforward	6

- (a) Capital gains on listed securities are taxable at reduced rates, effective from 1 July 2010 (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 dividends paid by companies engaged in power generation or by purchasers of power projects privatized by the Water and Power Development Authority. 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. The 20% rate applies to dividends received by banking companies from their asset management companies.
- (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 20% 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 20% 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.
- (g) Remittances of after-tax profits by branches of nonresident petroleum exploration and production companies are exempt.

## 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
- A modaraba, trust, cooperative society or a finance society established under or created by any law currently in force

**Tax rates.** The standard corporate income tax rate is 35%.

Small companies are subject to tax at a rate of 25%.

Small companies are companies that meet the following conditions:

- They have paid-up capital and undistributed reserves of not exceeding PKR 25 million.
- They have no more than 250 employees at any time during the year.
- They have annual turnover not exceeding PKR 250 million.
- They were not formed as a result of a restructuring involving the splitting up or reorganization of an already existing business.

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.

Certain types of income are subject to final withholding taxes. For information regarding these taxes, see Section A and *Withholding taxes*.

**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 profits 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.

A tax credit of 10% of the amount invested by a company in the purchase of plant and machinery for the purposes of balancing, modernization and replacement in an industrial undertaking set up in Pakistan and owned by the company may be claimed against the tax payable if the plant and machinery is purchased and installed between 1 July 2010 and 30 June 2015. Any unused tax credit may be carried forward to the following two tax years.

A tax credit of 15% of the tax payable is allowed in the tax year in which a company becomes listed on a registered stock exchange in Pakistan.

A tax credit equal to 100% of the tax payable on taxable income for a period of five years is granted to a company if the following conditions are satisfied:

- The company establishes a new industrial undertaking for manufacturing in Pakistan during the period of 1 July 2011 through 30 June 2016 or it invests in the purchase and installation of plant and machinery for the purpose of balancing, modernization and replacement of plant and machinery already installed in an industrial undertaking established in Pakistan and owned by the company.
- The investment is made entirely out of equity.

**Capital gains.** Effective from 1 July 2010, capital gains on shares of public companies, vouchers of the Pakistan Telecommunication Corporation, Modaraba Certificates, instruments of redeemable capital and derivative products are taxable. The tax rates vary according to the holding period of the securities. If the holding period for such securities is more than one year, the tax rate is 0%. The following tables provide the tax rates if the holding period is less than one year.

**Holding period of less than six months**

Year	Rate (%)
2012	10
2013	12.5
2014	15
2015	17.5

**Holding period of 6 months or more but not more than 12 months**

Year	Rate (%)
2012	8
2013	8.5
2014	9
2015	9.5
2016	10

Capital gains on other assets (including non-public securities) are taxable at the corporate rate of 35%. However, 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 losses can be offset only against capital gains. Capital losses can be carried forward for six years. However, capital losses on disposals of shares of public companies, vouchers of the Pakistan Telecommunication Corporation, Modaraba

Certificates, instruments of redeemable capital and derivative products cannot be carried forward for offset against capital gains of subsequent 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 Federal 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.* In general, advance tax is payable quarterly based on the tax to turnover ratio of the latest tax year. However, banking companies must pay advance tax on a monthly basis. 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. For taxpayers other than banking companies, the due dates for the advance tax payments are 25 September, 25 December, 25 March and 15 June. Banking companies must pay advance tax by the 15th day of each month.

Adjustable quarterly advance tax on capital gains from sale of securities is payable on the capital gains derived during the quarter at a rate of 2% if the holding period is less than 6 months and 1.5% if the holding period is between 6 and 12 months.

*Minimum tax.* Resident and nonresident banking companies and other full companies are subject to a minimum income tax equal to 1% 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 and used to offset the actual tax liability of the following five tax years. Oil marketing companies, oil refineries and the Sui Southern Gas Company are subject to minimum tax at a reduced rate of 0.5% if their annual turnover exceeds PKR 1 billion. For distributors of pharmaceutical products, fertilizers and consumer goods, the rate of minimum tax is 0.2%. Companies rendering services are subject to a minimum tax equal to the withholding tax paid on account of the rendering of services (that is, at a rate of 6%) if the total tax liability is less than the amount of minimum tax.

*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	5/7.5/10 (b)
Payments for goods	
Specified goods	1.5 (c)
Other goods	3.5 (c)
Payments for imported goods	5 (d)
Payments under executed contracts for construction, assembly and similar projects	6 (e)
Payments for services	
Rendered by residents	
Transport services	2
Other services	6 (f)
Rendered by nonresidents through a PE	6
Brokerage and commission	
Indenting commission	5 (a)(g)
Other commission and brokerage	10 (a)(g)
Advertisement services by a nonresident person relaying from outside Pakistan (broadcasting an advertisement into Pakistan from outside the country)	5/10 (a)
Payments to employees	– (g)(h)
Trading of shares on a registered stock exchange	0.01/10 (i)
Cash withdrawals exceeding PKR 25,000	0.2 (j)
Purchases of domestic air tickets	5

- (a) This tax is a final tax.
- (b) This tax is a final tax. The rate depends on the amount of rent received during a tax year and the status of the recipient.
- (c) 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.
- (d) This tax is a final tax for entities engaged in trading.
- (e) 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.
- (f) For corporate taxpayers, including permanent establishments of nonresident companies, 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 minimum tax.
- (g) This tax is imposed on residents and nonresidents.
- (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. The 0.01% and 10% tax are considered to be advance payments of tax, which may be credited against the final tax liability for the year.
- (j) The 0.2% rate applies to all withdrawals exceeding PKR 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 of Income Tax that the person's income is exempt from tax
- The withholding tax is imposed on the entire sum if the aggregate of sums withdrawn during a day exceeds PKR 25,000.

In general, for payments not listed in the above tables or in Section A, withholding tax is imposed at a rate of 20% 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 gross tax payable for each day of default is imposed, subject to a minimum of PKR 5,000 and a maximum of 25% of the gross tax payable.

In addition, interest and penalties are imposed in the following circumstances:

- Interest at a rate equal to the Karachi InterBank Offered Rate (KIBOR) plus 3% per quarter is charged if tax payments, including advance tax payments, are not made or are partially paid.
- A penalty of up to 100% may be levied for nonpayment of tax due.
- If income is concealed, a penalty equal to the amount of tax sought to be evaded is levied in addition to the normal tax payable.

The income tax department is required to pay compensation at the rate of KIBOR per year on refunds due that have not been paid within three months of the due date, from the expiration of the three months until the date on which the refund is paid.

**Dividends.** Dividends, including remittances of profits by a Pakistan branch to its head office (other than remittances of profits by a Pakistan branch engaged in exploration and production of petroleum), 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.** The determination of taxable income is 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.

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.

For advances and off-balance sheet items, banking companies are allowed a provision not exceeding 1% of their total advances if a certificate from the external auditor is furnished by the banking company to the effect that such provisions are based on and are in line with the Prudential Regulations issued by the State Bank of Pakistan. The amount in a provision in excess of 1% is allowed to be carried over to succeeding years.

**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.

*First-year allowances.* A first-year depreciation allowance at a rate of 90% is granted for plant machinery and equipment installed by an industrial undertaking established in specified rural and underdeveloped areas. This allowance is granted instead of the initial allowance.

A first-year depreciation allowance at a rate of 90% is granted for plant machinery and equipment installed for generation of alternate energy. This allowance is available to an industrial undertaking set up anywhere in Pakistan and owned and managed by a company. The allowance is granted instead of the initial allowance.

*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 following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
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	0/16/19.5/22
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

Nature of tax	Rate (%)
State and local taxes; an annual trade tax on companies, including branches of foreign companies	Various
Capital value tax; imposed on purchases of immovable property	2
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 PKR 600 per month)	6
Employees' old age benefits; based on minimum wages of employees under law of PKR 7,000 per month; payable by	
Employer	5
Employee	1

### 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.** Under the 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 PKR 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.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Austria	10/20 (d)	– (b)(g)	20
Azerbaijan	10	10	10
Bahrain	10	10 (b)	10
Bangladesh	15	15 (b)	15
Belarus	10/15 (d)	10 (b)	15
Belgium	10/15 (d)	15 (b)	20 (m)
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	5/7.5/10 (a)	10 (b)	10
Jordan	10	10 (b)	10
Kazakhstan	12.5/15 (o)	12.5 (t)	15
Korea (South)	10/12.5 (d)	12.5 (b)	10
Kuwait	10	10 (t)	10
Lebanon	10	10 (b)	7.5
Libya	15	– (g)	– (g)
Malaysia	15/20 (d)	15 (b)(f)	15
Malta	15 (a)	10 (b)	10
Mauritius	10	10 (b)	12.5
Morocco	10	10 (b)	10
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
Serbia	10	10 (b)	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 (a)	10 (f)	10
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

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
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.

# Palestinian Authority

(Country code 972)

(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	0
Interest	0
Royalties from Patents, Know-how, etc.	0
Payments for Services and Goods	16 (d)(e)
Other Payments to Nonresidents	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

(a) See Section B.

(b) Foreign 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) This withholding tax applies to payments of higher than US\$350 if the vendor does not provide a deduction-at-source certificate.

**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. 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%.

Under the Law for Encouragement of Investments, approved companies may benefit from a full income tax exemption of 1 to 5 years and a 50% reduction of the standard corporate income tax rate 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. Gains arising from sale of real estate are not taxable if no more than one sale is made in a year and if the seller is not a real estate dealer. In addition, sales of shares derived by financial institutions are not taxable, and losses on such sales are not 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. The incentive rates are announced at the beginning 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.** Dividends distributed by companies resident in Palestine are exempt from tax.

### 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 by individual farmers is exempt from tax.

All business expenses incurred to generate income may be deducted, but the deductibility of certain expenses is limited. Entertainment expenses are deductible up to the lesser of US\$50,000 or 3% of net income. The deduction for head-office charges is limited to the lower of 5% of net taxable income or US\$100,000.

**Inventories.** The tax law does not specify a particular method for determining the cost of inventory.

**Provisions.** In general, provisions are not deductible for tax purposes, except for banks and insurance companies. Banks can deduct bad debt provisions, and insurance companies can deduct part of its unexpired risks' and outstanding claims' provisions.

**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>
Industrial buildings	4
Transportation	
Land transportation	
Cars, trains, buses, trucks and trailers	10
Cars and buses for public transportation and for driving schools	12
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 and deduct 20% of the losses in each of the following five tax years.

#### **D. Other significant taxes**

The following table 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 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 double tax treaties with Sudan and Vietnam.

The Palestinian Authority has also entered into tax treaties related to customs with the European Union, Japan, Turkey, 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.

# Panama

(Country code 507)

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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 (a)	
On Nominative Shares	10
On Bearer Shares	20
Interest	12.5 (c)
Royalties from Patents, Know-how, etc.	12.5
Payments on Leases	12.5
Payments for Professional Services	12.5
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (d)

- (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) Certain interest is exempt from tax. See Section B.  
 (d) 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. However, dividends arising from foreign income that are distributed by Panamanian companies holding a Notice of Operation (formerly Commercial License) are subject to tax (for further details, see *Dividends*).

**Corporate income tax rates.** Income tax is assessed at a flat rate of 25% on net taxable income. For details regarding net taxable income, see Section C.

Financial entities regulated by Law 42 of 2001 and entities that are mainly engaged in the generation and distribution of electricity, telecommunications services, the administration of gaming and casino activities, insurance and reinsurance, mining, fabrication of cement and banking services are subject to the following income tax rates.

Years	Rate (%)
2012 and 2013	27.5
2014	25

Taxpayers with annual taxable income greater than B/. 1,500,000 are required by law to calculate the tax using two methods and pay the higher of the amounts calculated under these methods. This calculation must be included in their annual income tax return. The following are the two methods:

- Applying the corresponding tax rate to the net taxable income
- Applying the corresponding tax rate to 4.67% of the total income

**Headquarters Law.** The Headquarters Law created a special tax-incentive system for multinational companies that establish their headquarters in Panama (Multinational Company Headquarters [Sede de Empresas Multinacionales, or SEM] regime).

Under the Headquarters Law, 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 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
- Plot or construction design

These services must be part of the ordinary course of business of the parent company or its affiliates.

Under the Headquarters Law, the headquarters must belong to a multinational company with either regional or international operations or significant operations in the country of origin. To operate under the Headquarters Law, a license granted by the Commission of Licenses of the Multinational Companies of the Ministry of Commerce and Industry must be obtained. Companies granted a license are exempt from income tax for services rendered to entities domiciled abroad that do not generate taxable income in Panama. However, if the services rendered by the company affect the production or conservation of Panamanian income and if the price or value of the services provided is considered to be a deductible expense by the services recipient, the income related to those services is considered to be Panamanian-source income. In this case, the recipient of the services must withhold 25% of 50% of the amount paid to the company under the Headquarters Law regime (effective tax rate of 12.5%).

Companies granted a license to operate under this regime, are exempt from 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 or purchase of goods or services rendered in Panama.

In addition, the Headquarters Law creates a special immigration regime for foreign employees working for the beneficiary 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:

- From an office established in Panama, they direct transactions that take place or produce effects abroad.
- They receive their income directly from the home office established abroad.

Contributions to the social security regime are not 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, as amended:

- 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 taxpayer may claim a cash refund or credit the excess against other tax liabilities. The tax credit may also be transferred to another taxpayer.
- Income derived from capital gains is not included in the seller's ordinary income for the fiscal year, because the tax due is paid through withholding.

*Movable assets.* Capital gains derived from transfers of movable assets are subject to income tax at a reduced rate of 10%.

*Real estate 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
- 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.

*Sales of homes and business premises by taxpayers engaged in real estate business.* Effective from 1 January 2011, for home sales by taxpayers in the real estate business, the following rates are applied to the higher of the total value of the transfer or the land value.

Higher of transfer or land value	Rate %
B/. 0 to B/. 35,000	0.50
Over B/. 35,000 to B/. 80,000	1.50
Over B/. 80,000	2.50

The rate imposed on taxpayers in the real estate business for sales of new business premises is 4.50%

The above rates apply if the following conditions are satisfied:

- In the seller's ordinary trade or business, the seller deals with home sales and new business premises.
- It is the first sale of the property (the first owner who is registered in the Public Registry must not be the person who signed as the owner or developer of the construction).
- The land was revalued with the Directorate of Cadastre and Patrimonial Assets in the two-year period preceding the sale.
- Building permits are issued on or after 1 January 2011.

Taxpayers who engage only in the above activities are not required to pay the advance of 1% or estimated tax.

*Sales of houses and business premises that are not new or revalued.* Taxpayers engaged in the sale of real estate that is not new or that has not been revalued in the two-year period preceding the sale are subject to the general rules of the Tax Code and its regulations and accordingly pay income tax at the general rates.

*Ordinary taxpayers that are not engaged in the trade or business of the purchase and sale of real estate.* For ordinary taxpayers that are not engaged in the trade or business of the purchase and sale of real estate, tax is calculated at a rate of 10% on taxable income. This income is not taken into account in determining the taxpayer's taxable income, and the taxpayer may not deduct the transfer tax or transfer fees incurred.

Advance income tax of 3% must be paid on the greater of the total value of the transfer or land value.

The above tax can be considered as final payment or the surplus can be reimbursed if the amount of the tax exceeds 10% of taxable income.

**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 approximately 1%. Tax returns are filed using forms provided by the Ministry of Finance and Treasury.

Effective from 1 January 2011, legal entities must make monthly estimated tax payments equal to 1% of monthly net income. The return and payment are due within the first 20 calendar days of the following month.

**Dividends.** All companies that have a Notice of Operations or Commercial License (the prior name of the Notice of Operations) or that generate taxable income in Panama must pay dividend tax at a fixed rate of 10% for nominative shares and 20% for bearer shares. Dividends distributed from foreign-source income, export operations, and certain types of exempt income are subject to a final 5% withholding tax. Subsequent distributions of these dividends are not taxed if they arise from dividends that already have been subject to the above-mentioned withholding.

Dividends distributed by entities in free-trade zones from local-source income, foreign-source income, export activities and certain types of exempt income are subject to a final 5% withholding tax.

The following are exempt dividends:

- Dividends distributed by Panamanian companies that do not require a Notice of Operations or Commercial License or that do not produce any taxable income in Panama
- Dividends distributed by entities under the tax-incentive system for multinational companies that establish headquarters in Panama (SEM regime; see *Headquarters Law*)
- Dividends distributed by entities under the Panama-Pacifico Special Economic Area (Howard Regime) from activities that are exempt under such regime

If a tax treaty applies, the treaty measures prevail over the domestic rules.

**Withholding taxes.** A 15% withholding tax is imposed on commissions, financial charges and taxable interest (see below for details concerning exempt interest) derived by banks or financial institutions. In all other cases, the withholding tax rate is 12.5% for interest. The withholding tax rate is also 12.5% for royalties paid to nonresident companies. Lease payments made abroad by companies are subject to withholding tax at the corporate rate. Payments for professional services rendered in Panama or from abroad are subject to a 12.5% withholding tax. 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.

Interest income derived from the following investments is exempt from withholding tax:

- Savings and time deposits held in Panamanian banks
- Panamanian government securities
- Securities issued by companies registered with the National Securities Commission, if the securities were acquired through a securities exchange established to operate in Panama

- Interest and commissions paid by banking institutions in Panama to international banks or financial institutions established abroad, in connection with loans, bankers' acceptances and other debt instruments
- Interest paid to official or semiofficial institutions of international bodies or foreign governments
- Interest paid to foreign investors, if the capital on which such interest is paid is exclusively intended for housing projects for people of low income

For a loan granted by a domestic bank or related Panamanian party, no withholding tax is applicable, because the financial services payment is taxed in the lender's annual income tax return.

If a local company does not take a deduction for an expense, no withholding tax applies.

**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.** Taxable income or revenue includes all income derived from business activities in Panama less expenses incurred wholly and exclusively in the production of taxable income or the conservation of its source.

Net taxable income is the difference or balance that results on deducting the following from gross income or general earnings:

- Foreign income
- Exempt income
- Deductible costs and expenses

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
- Distributing dividends or profits derived from income not generated in Panama, including income derived from the two activities noted above, to the extent that the company distributing dividends does not hold a Notice of Operation

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 production 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.** Tax-loss carrybacks are not recognized under Panamanian law. Carryforwards of net operating losses are allowed. Taxpayers can deduct net operating losses over a period of five years following the year in which the loss is incurred. The maximum annual deduction is 20% of the relevant loss, but the amount of the deduction may not exceed 50% of the taxable income for the year.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax; tax on the sale or transfer of any chattel, services and imports of goods; certain goods and services are specifically exempt, such as medical services and fixed telephony that is not for commercial use	7
Notice of Operation (formerly Commercial and Industrial Licenses); paid annually on corporate capital (up to a maximum amount of B/. 60,000)	2
Notice of Operation for companies operating under a free-trade zone regime; paid annually on corporate capital (up to a maximum tax of B/. 50,000)	1

Nature of tax	Rate (%)
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	13.50
Employee	10.25
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	Various
Public accommodations and lodging services	10

## E. Miscellaneous matters

**Foreign-exchange controls.** Panama does not impose foreign-exchange controls.

**Transfer pricing.** Panama's transfer-pricing law applies to arrangements between related parties only if the non-Panamanian related party is a resident of a treaty partner of Panama. The obligations contained in Panama's transfer-pricing law are enforceable for the fiscal years beginning after the double tax treaty enters into effect.

## F. Tax treaties

Panama has signed tax treaties with Barbados, France, Italy, Korea (South), Luxembourg, Mexico, the Netherlands, Portugal, Qatar, Singapore and Spain. As of 1 January 2012, the treaties with Barbados, Luxembourg, Mexico and Spain are in effect. Panama has concluded treaty negotiations with Belgium, the Czech Republic, Ireland and Israel.

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## Papua New Guinea

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## A. At a glance

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	0
Branch Income Tax Rate (%)	48 (a)
Withholding Tax (%)	
Dividends	17
Interest	15

Royalties	
Associates	30
Nonassociates	– (b)
Foreign contractors	12
Management fees	17
Net Operating Losses (Years)	
Carryback	0
Carryforward	20 (c)

(a) See Section B.

(b) For payments to nonassociates, the amount of tax equals the lesser of 10% of assessable income or 48% of taxable income. Assessable income is the amount assessable under the provisions of the Income Tax Act. Taxable income is the amount remaining after deducting from assessable income all allowable deductions.

(c) Resource (mining, oil and gas) and primary production taxpayers may carry forward losses for an unlimited number of years.

## 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 Papua New Guinea (PNG)-source income. A resident company is a company incorporated in PNG. A company not incorporated in PNG is considered a resident company if it carries on business in PNG and if it has either its central management and control in PNG or its voting power controlled by shareholders who are residents of PNG.

**Tax rates.** Resident companies are subject to tax at a rate of 30%. Branches of nonresident companies (other than those engaged in mining operations) are subject to tax at a rate of 48%. Nonresident companies deriving “prescribed income” are subject to the foreign contractor provisions (see *Foreign Contractor Withholding Tax*).

The following table lists the tax rates for companies engaged in mining, petroleum and gas operations.

	Residents' rate (%)	Nonresidents' rate (%)
New petroleum operations	45	45
Incentive rate petroleum operations	30	30
Other petroleum operations	50	50
Gas operations	30	30
Mining operations	30	40

In addition to any tax liability determined in accordance with the above rates, an Additional Profits Tax may be levied with respect to gas projects in certain circumstances.

**Foreign Contractor Withholding Tax.** Most activities conducted by nonresidents in PNG (including PNG branches), other than individuals deriving employment income, fall under the foreign contractor and management fee (see *Management Fee Withholding Tax*) provisions of the domestic law. The Foreign Contractor Withholding Tax (FCWT) applies if income is derived by nonresidents (usually referred to as “foreign contractors”) from contracts for “prescribed purposes,” including installation and construction projects, consultancy services, lease of equipment and charter payments.

FCWT is calculated by reference to the gross contract income. In broad terms, the PNG Income Tax Act provides that if a foreign

contractor derives income from a prescribed contract, the person is deemed to have derived taxable income of 25% of the gross contract income. This taxable income is subject to tax at the non-resident corporate tax rate of 48%, resulting in an effective PNG tax rate of 12% on the gross contract payment. The local contracting party must withhold the tax and remit it to the Internal Revenue Commission (IRC) within 21 days after the end of the month in which the payment is made.

As an alternative to paying FCWT, the foreign contractor can elect to file an income tax return and pay tax on actual taxable income at the nonresident corporate tax rate of 48%. This election must be made by written request to the Commissioner of Internal Revenue before the commencement of work under the contract. The FCWT is considered the default tax regime. Requests to be assessed on a net profit basis are subject to the discretion of the Commissioner General.

If the foreign contractor elects to be assessed on a net profit basis, a deduction is available for all costs directly attributable to the derivation of the PNG-source income, including depreciation of equipment. A deduction is also available for any indirect costs related to the income (that is, head office, general administration and management expenses). The deduction for allowed indirect costs is limited to the lesser of the following:

- 5% of the gross income from the prescribed contract
- An amount calculated by applying to the head office expenses (other than expenses incurred directly in deriving the contract income) the ratio of the gross income from the prescribed contract to the worldwide income of the taxpayer

**Management Fee Withholding Tax.** Subject to the availability of treaty relief, Management Fee Withholding Tax (MFWT) at a rate of 17% must be withheld from management fees paid or credited to nonresidents.

The definition of “management fee” is very broad and includes “a payment of any kind to any person, other than to an employee of the person making the payment and other than in the way of royalty, in consideration for any services of a technical or managerial nature and includes payment for consultancy services, to the extent the Commissioner is satisfied those consultancy services are of a managerial nature.”

In practice, MFWT generally applies to services rendered outside PNG, and FCWT (see *Foreign Contractor Withholding Tax*) applies to fees for services rendered in PNG.

The deduction for management fees paid by a PNG resident company to a nonresident associate cannot exceed the greater of 2% of assessable income derived from PNG sources or 2% of allowable deductions excluding management fees paid. However, a full deduction is allowed if the management fee can be supported as an arm’s length transaction. The above limit does not apply with respect to payments made to nonassociates.

**Incentives.** Several specific incentives are available with respect to taxpayers operating in certain industries, including resource taxpayers (mining, oil and gas) and taxpayers engaged in primary production. These incentives range from general concessions

with respect to the calculation of taxable income to concessions with respect to specific types of expenditure. Although some investors have been able to negotiate specific incentives for particular projects, the government now aims to include all tax concessions in the domestic legislation and make any concessions available on an industry basis with the goal of developing a more neutral and equitable treatment of projects.

**Capital gains.** Capital gains are not subject to tax in PNG. The disposal of a capital asset may be subject to tax to the extent the disposal takes place as part of a profit-making scheme or is part of the ordinary business activities of a taxpayer.

Although capital gains on the disposal of depreciable plant and equipment are generally not subject to tax, a calculation of any gain or loss on disposal must be performed. If the amount received exceeds the tax written-down value, an amount of income may be derived (up to the amount of depreciation deductions previously claimed). Alternatively, if the amount received on disposal is less than the tax written-down value, the taxpayer may be able to claim a deduction.

**Administration.** The PNG tax year is the calendar year. However, for most companies, a substituted accounting period is permitted on written request to the Commissioner General of Internal Revenue. Tax for any fiscal year is payable in three equal installments on a provisional tax assessment basis according to the following schedule:

- First installment by 30 April
- Second installment by 31 July
- Third installment by 31 October

Provisional tax is generally assessed by the Commissioner based on the income tax return of the preceding year. Accordingly, provisional tax does not generally become payable until after a taxpayer has filed its first tax return.

Any balance must be paid within 30 days after the assessment is issued and served on the taxpayer. Any overpayment of provisional tax is refundable to the taxpayer. The Commissioner General of Internal Revenue does not pay interest on overpaid tax. Penalties apply for underestimation of provisional tax.

Companies are required to file tax returns within three months after the end of the fiscal year (that is, by the end of February of the following year), but extensions of an additional three, six or eight months are possible, depending on the level of taxable income. The income and expenses of taxpayers must be expressed in Papua New Guinea currency, unless permission is granted by the Commissioner General of Internal Revenue to report in a currency other than Papua New Guinea currency.

Companies carrying on business in PNG, or deriving income in PNG, must appoint a public officer to act as the representative of the company in all dealings with the IRC. The public officer need not be an employee or shareholder of the company but must be tax resident in PNG.

**Dividends.** Dividends received by resident companies from other resident companies are fully rebatable; that is, although dividends received by corporate taxpayers from other PNG corporations are

fully assessable, the taxpayers may claim a credit of 30% (corporate tax rate), thereby reducing the effective tax rate to nil. Dividends are exempt if they are either paid out of profits derived by petroleum or gas operations or paid out of profits arising from the sale or revaluation of assets that were acquired for purposes other than resale at a profit.

Dividends paid or credited by resident companies to nonresident shareholders are generally subject to a final 17% dividend withholding tax (unless the rate is reduced by a tax treaty), which is deducted at source from the gross amount of the dividend.

**Foreign tax relief.** A resident deriving foreign-source income that has been subject to foreign tax is entitled to a credit equal to the lesser of the following:

- The foreign tax paid
- The amount of PNG tax payable on that income

For purposes of the foreign tax credit, no distinction is made between income derived from treaty and nontreaty 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 of other business. Expenses are deductible to the extent that they are incurred in producing assessable income, and are not capital or of a capital nature or incurred in producing exempt income. Deductions are allowable for certain capital expenditures incurred in the agriculture and fishing industries.

**Foreign-exchange gains and losses.** Realized exchange gains and losses from debts incurred or borrowings made in a foreign currency are generally assessable and deductible, respectively, as are any gains or losses made on amounts of income or deductions. Unrealized gains are not assessable, and unrealized losses are not deductible.

**Inventories.** A taxpayer must elect to value trading stock either at cost, market selling price or any other approved value in the first year of income. Thereafter, trading stock must be valued at the end of an income year either at cost, market selling price, or replacement price. Any change in the method of valuing trading stock must be approved by the Commissioner General of Internal Revenue. The Commissioner has the discretion to make adjustments if the trading stock is sold or otherwise disposed of other than at market value.

**Provisions.** Provisions are not deductible until payments are made or, in the case of doubtful debts, until the debts are considered totally irrecoverable and are written off.

**Tax depreciation.** Depreciation of fixed assets that are used in the production of taxable income is calculated using either the prime-cost (straight-line) method or the diminishing-value method. The taxpayer must elect the depreciation method in the first year of income. Any change in the method of depreciation must be approved by the Commissioner General of Internal Revenue.

The IRC publishes depreciation rates for certain items of plant and equipment. The following are some of the applicable rates published by the IRC.

Item	Method	
	Prime-cost (%)	Diminishing-value (%)
Manufacturing		
Cement, pipe and tile manufacturing plant	10	15
Chemical manufacturing plant	10	15
Primary industries, farmers and so forth		
Cocoa and coffee industry plant	10	15
Copra industry plant	5	7.5
Other industries		
Aircraft	10	15
Building industries	20	30
Buildings		
Residential buildings	2	3
Storage buildings (steel framed)	4	6
Transportation		
Aircraft	12.5	18.75
Motor vehicles (other motor vehicles, including buses, lorries and trucks)	20	30
Wharves	5	7.5
Ships and steamers	7.5	11.25
Mining		
Development works	Nil	Nil
Dragline	13	20
Plant and machinery		
General plant and equipment	10	15
Drills	17	25
Earthmoving plant and heavy equipment	20	30
Motor trucks	20	30
Shovels	20	30
Oil		
Exploration	20	30
Oil companies		
Aircraft	25	37.5
Aircraft refueling equipment	15	22.5
Drilling plant	20	30
Seismic geophysical survey equipment	20	30
Oil rigs (offshore) and ancillary plant	10	15
Petroleum		
Drilling and down hole (specialized drilling) equipment	20	30
Earthmoving plant and heavy equipment	20	30
General plant and equipment	17	25
Onshore production plant	13	18
Offshore production plant	13	20
Refining plant	13	20
Wharves and jetties	5	7.5
Vehicles	20	30

The annual depreciation rate for allowable exploration expenditure incurred by resource taxpayers is determined using the

diminishing-value method. The rate is determined by dividing the expenditure by the lesser of the number of years in the remaining life of the project or four.

Depreciation for short-life allowable capital expenditure (ACE; effective life of less than 10 years) incurred by resource taxpayers must be calculated at a rate of 25% under the diminishing-value method. For long-life ACE (effective life of 10 years or more) incurred by resource taxpayers, depreciation must be calculated at a rate of 10% under the straight-line method.

**Environmental protection and clean-up costs.** Effective from the income year beginning 1 January 2011, a specific deduction is available to taxpayers for certain expenditure incurred with respect to environmental-protection activities and clean-up costs incurred when pollution occurs. This measure is available to taxpayers in all industries. It was introduced to encourage taxpayers to safeguard the environment.

Several specific exclusions exist, including capital expenditure incurred to acquire land and buildings. Expenditure incurred for environmental impact studies is deductible under a separate measure (see *Environmental impact studies*).

Depreciation deductions are also available for plant and equipment used in environmental-protection activities.

**Environmental impact studies.** Effective from the income year beginning 1 January 2011, a deduction is allowed for environmental impact studies. For this purpose, an environmental impact study is the study of the environmental impact of an assessable income-producing activity or business that is carried on or proposed to be carried on in PNG by the taxpayer.

The expenditure incurred is apportioned over the life of the project or 10 years, whichever is less. If the taxpayer is in the resources industry, the cost of the environmental impact is not allowable under this measure, but is available under the specific resources taxation provisions.

Depreciation deductions are also available for plant and equipment used for environmental impact studies.

**Rehabilitation costs of resource taxpayers.** For resource projects that begin on or after 1 January 2012, at the end of a project, a resource taxpayer may transfer losses incurred on environmental rehabilitation to other projects owned by it. PNG uses ring-fencing provisions and calculates the profits of resource projects on a project-by-project basis. Historically, losses incurred were effectively lost if no further income was produced.

**Research and development.** A 150% deduction is available for “prescribed” research and development (R&D) expenditure. To claim the R&D concession, taxpayers need to complete and submit an application annually to the Research and Development Expenses Approval Committee (within the PNG IRC) for approval before the start of the fiscal year.

The following payments and expenditure incurred by a taxpayer carrying on business for the purpose of obtaining assessable income may be allowable R&D deductions:

- Payments to an approved research institute for scientific research related to the business of the taxpayer and payments to an approved research institute for the purpose of undertaking research related to the business of the taxpayer
- Capital expenditure on scientific research related to the business of the taxpayer (except expenditure on plant, machinery, land or buildings, or alterations, additions or extensions to buildings)

For purposes of the R&D concession, scientific research includes any activities in the fields of natural or applied science for the extension of knowledge.

**Relief for losses.** Losses incurred may generally be carried forward for 20 years. However, losses incurred by resource taxpayers and primary production taxpayers can be carried forward indefinitely. Losses are allowed as a deduction only if the taxpayer passes either the continuity of ownership test or the same business test.

For entities in the resources sector, losses may also be quarantined on a project basis.

Losses may not be carried back.

No provisions exist for grouping losses with associated companies (with the specific exception of certain company amalgamations).

**Groups of companies.** No provisions exist in PNG for the grouping of income or losses of associated companies or for other group relief. Companies are assessed on an individual basis.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Goods and services tax (GST); imposed on virtually all goods and services unless the goods or services are exempt (for example, financial services and gambling) or the recipient or supplier is zero-rated (for example, resource companies); any entity undertaking taxable activity in PNG must register and charge GST if taxable supplies exceed, or are expected to exceed, K 250,000 in any 12-month period (the registration threshold before 1 January 2012 was K100,000); entities that are registered must account for GST collected (output tax) and GST paid (input tax) during each month with any excess of GST collected to be remitted to the IRC by the 21st day of the following month; entities may generally claim a refund for most GST input tax paid on importations or local purchases of goods and services	10
Training levy; imposed on all businesses with an annual payroll exceeding K 200,000; the amount payable is reduced by training expenses incurred by the employer for the benefit of PNG citizen employees; expenses incurred to train noncitizens are not qualifying training expenses for the purpose of the training levy	2

Nature of tax	Rate (%)
Customs and excise duty; imposed on all goods imported into PNG, unless the goods are duty-free or exempt from duty; duty is imposed on the total value including cost, insurance and freight; the rate of duty depends on the nature of the goods; a zero rate often applies to goods imported into PNG if the goods are not available in PNG, but a specific analysis must be undertaken in each instance	Various
Stamp duty; imposed on dutiable instruments such as deeds, share transfers and a wide range of other documents at varying rates; may also apply to documents executed outside PNG under provisions that impose an obligation to file documents for assessment for stamp duty with respect to property or activities in PNG	Various

## E. Miscellaneous matters

**Foreign-exchange controls.** The currency in PNG is the kina (K).

A tax-clearance certificate is required if certain cumulative remittances of foreign currency exceed K 200,000 in a calendar year. For a remittance to a tax haven, a tax clearance is always required, regardless of the amount being remitted.

PNG resident companies are generally not permitted to receive payment for goods or services in a foreign currency. Consequently, if a contract is entered into between two PNG resident companies in a foreign currency (for example, U.S. dollars), the settlement of the invoice must be made in Papua New Guinea currency. For exchange-control purposes, a resident includes a foreign company operating actively in PNG as a branch.

Approval is also required from the Bank of Papua New Guinea (central bank) to open and operate either a kina or foreign-currency account outside PNG.

**Debt-to-equity ratios.** The Bank of Papua New Guinea was previously responsible for enforcing thin-capitalization rules. In September 2007, the Bank of Papua New Guinea liberalized the foreign-exchange rules. As a result, Bank of Papua New Guinea approval is no longer required to obtain foreign loans. However, potential transfer-pricing issues may arise if excess gearing exists (that is, the level of debt cannot be supported by the entity on a stand-alone basis).

Thin-capitalization rules apply to taxpayers operating in the resources sector.

**Antiavoidance legislation.** Contracts, agreements or arrangements that have the effect of avoiding any tax may be rendered void by the tax authorities.

**Transfer pricing.** Related-party transactions are accepted by the tax authorities if they are carried out at arm's length. However, a taxpayer's taxable income can be adjusted if transactions are not conducted on an arm's length basis (that is, if the transaction would not have been conducted on the same basis between independent parties). Specific provisions also exist with respect to management or technical fees paid to international related parties.

**Controlled foreign companies.** The PNG tax legislation does not currently contain any controlled foreign company (CFC) rules. Consequently, any income derived by foreign subsidiaries of a PNG entity is typically taxed on a receipts basis only.

## F. Treaty withholding tax rates

Taxpayers self-assess any treaty reductions of withholding taxes.

The following table lists the treaty withholding tax rates for dividends, interest, royalties, management fees and payments to foreign contractors with respect to prescribed services.

	Dividends	Interest	Royalties	Management fees (a)	Payments to foreign contractors
	%	%	%	%	%
Australia	17	10	10	0 (b)	12 (c)
Canada	17	10	10	0 (b)	12 (c)
China	15	10	10	0 (b)	12 (c)
Fiji	17	10	15	15	12 (c)
Germany	15	10	10	10	12 (c)
Korea (South)	15	10	10	0 (b)	12 (c)
Malaysia	15	15	10	10	12 (c)(d)
Singapore	15	10	10	0 (b)	12 (c)(d)
United Kingdom	17	10	10	10	12 (c)(d)
Nontreaty countries	17	15	– (e)	17	12

- (a) For the purposes of this table, management fees include technical fees.
- (b) Management services, including services of a technical nature rendered from sources outside of PNG for a resident of PNG are subject to MFWT at a rate of 17%. For services provided by a resident of a country with which PNG has entered into a double tax treaty that does not have a specific technical services article, the payment is not subject to withholding tax in PNG if all of the services were performed outside PNG.
- (c) Nonresident entities deriving income from “prescribed contracts” are subject to FCWT at a rate of 12% of the gross receipts. The income of residents of countries with which PNG has entered into a double tax treaty is subject to the FCWT provisions if the nonresident is conducting business in PNG through a permanent establishment.
- (d) A reduced FCWT rate may apply to foreign contractors from these countries in accordance with the nondiscrimination article in the relevant treaty.
- (e) The rate is 30% for payments to associates. For payments to nonassociates, the amount of the tax equals the lesser of 10% of assessable income or 48% of taxable income.

## Paraguay

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### 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.

The Paraguay incentive tax law provides an exemption from the 15% withholding tax mentioned above if the investment is greater than US\$5 million.

**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 following table 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 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
Selective tax on consumption, on certain manufactured and imported goods, such as cigarettes, liquor and petroleum products	5 to 50
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 entered into a double tax treaty with Chile. It has also entered into a tax treaty on international freight with Argentina and tax treaties on international air freight with Belgium, Germany and Uruguay.

# Peru

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**A. At a glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	5/30 (b)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	4.1 (c)
Interest	30 (d)(e)
Royalties	30 (d)
Technical Assistance	15 (d)
Digital Services	30 (d)
Branch Remittance Tax	4.1 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	4/Unlimited (f)

- (a) Effective from October 2011, mining companies are subject to an additional Special Mining Tax or to “voluntary” payments. For further details, see Section B.
- (b) Capital gains derived by nonresident entities are subject to income tax at a rate of 5% if the transfer is made in Peru. Otherwise, the rate is 30%. For further details regarding the applicable tax rate, see *Capital gains* in Section B. Capital gains derived by resident entities are subject to income tax at a rate of 30%.
- (c) 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.
- (d) This tax applies to payments to nonresidents.
- (e) A reduced rate of 4.99% applies to certain interest payments. For further details, see Section B.
- (f) 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, in certain circumstances, the company must pay the tax directly. For details regarding the Dividends Tax, see *Dividends*.

**Mining tax.** Effective from October 2011, mining companies are subject to an additional Special Mining Tax based on a sliding scale, with progressive marginal rates ranging from 2% to 8.4%. The tax is imposed on operating profits derived from sales of metallic mineral resources, regardless of whether the mineral producer owns or leases the mining concession.

In addition, mining companies that have signed stability agreements with the state are subject to “voluntary” payments, which are calculated based on a sliding scale with progressive marginal rates ranging from 4% to 13.12%. These rates are applied to operating profits derived from sales of metallic mineral resources, regardless of whether the mineral producer owns or leases the mining concession. Higher tax rates apply to higher amounts of operating profits.

**Tax incentives.** Various significant tax incentives are available for investments in the following:

- Mining enterprises
- Oil and gas licenses and services contracts
- 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 derived by nonresident entities are subject to income tax at a rate of 5% if the transfer is made in Peru. Otherwise, the rate is 30%. The regulations provide that a transaction is made in Peru if the securities are transferred through the Peruvian stock exchange. The transaction takes place abroad if securities are not registered with the Peruvian stock exchange or if registered securities are not transferred through the Peruvian stock exchange.

A special procedure has been introduced to determine the tax basis of securities acquired before 1 January 2010. The general rule is that the tax basis for these securities is the value of such securities at the closing of 31 December 2009, if this value is not lower than the price paid for the acquisition of the securities. The purpose of this rule is to impose capital gains tax only on the capital gain resulting from the appreciation of securities from 1 January 2010 (time when the exemption was repealed) and onwards.

Capital gains derived from the disposal of bonds issued by the government as well as by Peruvian corporations before 10 March 2007, through public offerings, are exempt from tax.

Effective from November 2011, for transactions involving Peruvian securities performed through the Lima Stock Exchange, CAVALI (Peruvian clearing house) acts as the withholding agent. As a result, nonresidents are not required to pay their income tax liability directly to the Peruvian Tax Administration.

For purposes of the withholding, the regulations provide the guidance regarding the following:

- The types of transactions that must reported to CAVALI
- Persons who must report the transactions
- When the tax basis of securities acquired on or after 10 July 2011 must be communicated to CAVALI

A Peruvian income source rule for capital gains is effective from 16 February 2011. Under this rule, capital gains derived from the disposal of foreign corporation shares that derive 50% of their value from securities issued by a Peruvian company are also deemed to be Peruvian-source income and accordingly are subject to tax in Peru. This rule applies if the 50% relationship between

the value of the shares of the foreign entity and the shares of the Peruvian corporation is verified during the 12 months preceding the disposal of the foreign corporation shares.

An additional requirement for the source rule mentioned above is effective from 22 July 2011. Under this rule, at least 10% or more of the shares or participation rights of the foreign entity must have been transferred during the 12 preceding months.

The new source rule law introduces a special procedure to determine the tax basis of the shares or participation rights acquired before 16 February 2011. The tax basis is the higher of the market value of the shares or participation rights and the acquisition cost.

For listed shares or participation rights, the market value is the value of such securities in a Peruvian or foreign stock exchange at the closing of 15 February 2011 if the value is not lower than the price paid for the acquisition of the securities.

For unlisted shares or participation rights, the market value is the book value according to the audited balance sheet closed within the 12 months preceding 15 February 2011 if the value is not lower than the price paid for the acquisition of the securities.

The purpose of the above rule is to subject to tax only the capital gain resulting from the appreciation of the shares or participation rights from 16 February 2011 onwards.

**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.

**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, 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 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 the LIBOR plus seven points, only the excess interest is subject to withholding tax at the regular rate of 30%.

Effective from 2011, interest arising from loans granted by international banks to Peruvian banks and financial institutions is subject to a 4.99% withholding tax.

In general, interest derived from bonds and other debt instruments is also subject to a withholding tax rate of 4.99%, unless the holder of the bonds or other debt instruments is related to the issuer or its participation is primarily intended to avoid transactions between related parties (back-to-back transactions).

Interest earned on bonds issued by the government is exempt from tax. Effective from 1 January 2010, interest on bonds issued by Peruvian corporations before 11 March 2007, in general through public offerings, is exempt from tax. Interest derived by entities from deposits in Peruvian banks is subject to a 4.99% withholding tax. An additional temporary exemption, which is in effect for 2011, applies to interest and gains resulting from loans granted to the Peruvian government by international lenders.

**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%.

Payments for nontechnical services provided in Peru are subject to withholding tax at a rate of 30%.

**Foreign tax relief.** Tax credits are permitted, within certain limits, for taxes paid abroad on foreign-source income.

### 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. However, certain types of revenue 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 accounting records that are in full compliance with International Financial Reporting Standards (IFRS). The accounting records 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 allows them to maintain their accounting books in foreign currency.

**Inflation adjustments.** For tax and accounting purposes, inflation adjustments apply only until 31 December 2004. Consequently, beginning 1 January 2005, transactions are recognized and recorded in local books at their 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 aircraft	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 aircraft 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.

<b>Asset</b>	<b>Maximum rate (%)</b>
Buildings and structures	5*
Cattle and fishing nets	25
Vehicles	20
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 beginning with the year following the year of the loss
- 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 following table 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 PEN 1 million (approximately US\$370,000); 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	0.4

Nature of tax	Rate (%)
Sales tax, on the sale of goods, services and the import of most products	18
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 (Alternatively, employees may contribute approximately 11.8% of their salaries to the Private Pension Funds Trustee [AFP].)	13
Employees' profit sharing; calculated on pretax income and deductible as an expense in determining taxable income; rate varies depending on companies' activities (mining, fishing, manufacturing, telecommunications and other activities)	5 to 10
Tax on Financial Transactions; imposed on debits and credits in Peruvian bank accounts	0.005

## 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 PEN 3,000 or US\$1,000 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 non-negotiable 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-resident 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
- Provision 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
- 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 return if either of the following circumstances exists:

- The total amount of the operations (revenues and expenses) with related parties is higher than PEN 200,000 (approximately US\$74,000).
- They have entered into at least one transaction with a resident in a low-tax jurisdiction (tax haven).

Taxpayers that must file information returns must file them between August and October of the following fiscal year in accordance with the Tax Administration's schedule.

Domiciled taxpayers must prepare a transfer-pricing study if either of the following circumstances exists:

- Gross revenues are higher than PEN 6 million (approximately US\$2,222,000) and the total amount of operations with related parties is higher than PEN 1 million (US\$370,000).
- 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
- Expenses related to credit operations, insurance or reinsurance, leasing of ships or aircraft and freight services to and from Peru

The following are considered low-tax jurisdictions.

Alderney	Dominica	Nauru
Andorra	Gibraltar	Netherlands
Anguila	Granada	Antilles
Antigua and Barbuda	Guernsey	Niue
Aruba	Hong Kong SAR	Panama
Bahamas	Isle of Man	St. Kitts and Nevis
Bahrain	Jersey	St. Lucia
Barbados	Labuan	St. Vincent and the Grenadines
	Liberia	

Belize	Liechtenstein	Seychelles
Bermuda	Luxembourg	Tonga
British Virgin Islands	Madeira	Turks and Caicos Islands
Cayman Islands	Maldives	U.S. Virgin Islands
Cook Islands	Marshall Islands	Vanuatu
Cyprus	Monaco	Western Samoa
	Montserrat	

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 is 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.
- 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 Brazil, 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 Brazil, Canada and Chile provide for a maximum withholding tax rate of 15% for dividends, interest and royalties. Peru has signed double tax treaties with Korea (South), Mexico and Spain, but these treaties are not yet in force.

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**A. At a glance**

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	
Real Property	6 (a)
Shares	5/10 (b)
Branch Tax Rate (%)	30 (c)
Withholding Tax (%)	
Dividends	0 (d)
Interest on Peso Deposits	20 (e)(f)
Royalties from Patents, Know-how, etc.	20 (f)
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	3 (g)

- (a) See Section B.
- (b) 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.
- (c) Certain types of Philippine-source income of foreign corporations are taxed at preferential rates (see Section B).
- (d) 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 30%. However, this rate may be reduced to 15% if certain conditions are met (see Section B).

- (e) 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.
- (f) Under domestic law, if the recipient is a nonresident foreign corporation, the final withholding tax rate is 30%. For reduced rates under tax treaties for nonresident foreign corporations, see Section F.
- (g) 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 30%.

Subject to certain exceptions, a 2% Minimum Corporate Income Tax (MCIT) may be imposed on domestic and resident foreign corporations beginning with the fourth tax year following the year of commencement of business operations. The MCIT must be paid if the corporation has zero or negative taxable income or if the MCIT is greater than the regular corporate income tax liability.

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 domestic corporations and 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

Type of income	Rate (%)
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.

Gains derived from the sale of shares of domestic corporations not traded on the stock exchange are subject to tax at a rate of 5% of the net capital gain not exceeding P 100,000 and at a rate of 10% on the excess. If the shares are listed and traded through the facilities of the Philippine Stock Exchange, the tax is 0.5% of the gross selling price. A tax is also imposed on the sale, barter, exchange or other disposition through an initial public offering of shares of stock in a closely held corporation at a rate of 1%, 2% or 4% of the gross sales price of the shares.

**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 30% tax may be reduced to 15% if any of the following circumstances exists:

- The country of domicile of the recipient does not impose any tax on offshore or foreign-source income.
- The country of domicile of the recipient allows a credit for taxes deemed paid in the Philippines equal to 15%, which represents the difference between the regular corporate income tax rate of 30% and the 15% preferential tax on dividends.
- The dividend is not taxed in the recipient's country of domicile.

**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, such as interest, taxes, losses, bad debts, charitable and other contributions, and contributions to a pension trust. All of these expenses 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 33% of interest income that has been subject to final tax. Interest incurred to acquire property used in a trade or business may be claimed as a deduction or treated 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 a 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.

**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 depreciation method used must be reasonable and 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 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%

Nature of tax	Rate
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 that is not made through a local stock exchange	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 adopted liberal foreign-exchange policies. In general, no restrictions are imposed on the repatriation of capital, profits or income earned in the Philippines. Foreign loans and foreign investments may be registered with the Philippine Central Bank (the *Bangko Sentral ng Pilipinas*, or BSP). Only loans registered with the BSP are eligible for servicing through the use of foreign exchange purchased from the banking system. However, the registration of a foreign investment is required only if the foreign exchange needed to service the repatriation of capital and the remittance of dividends, profits and earnings is sourced in the banking system.

**Transfer pricing.** The method used by a corporation to fix prices must be consistent worldwide.

The Philippines has yet to adopt formal transfer-pricing regulations (draft regulations have been circulated and are currently being evaluated by the tax authorities). However, existing tax rules set the parameters for determining the “true” taxable income of related taxpayers in specific transactions such as intercompany loans and advances, cost sharing, resale and agency agreements, and the supply of goods and services between related parties.

The draft regulations are based on the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines and provide for several methods of arriving at an arm’s-length price. Before the formal issuance of transfer-pricing regulations, the Bureau of Internal Revenue (BIR) has mandated that the OECD transfer-pricing guidelines must be applied as the interim transfer-pricing guidelines.

**Related-party transactions.** Related-party transactions must comply with the arm’s-length standard. 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 BIR Commissioner 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. A tax treaty relief

application must be submitted before a tax exemption or beneficial treaty rate under a tax treaty may be claimed.

	<b>Dividends (v)</b> %	<b>Interest (w)</b> %	<b>Royalties</b> %
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	15 (d)	10 (b)	10 (c)
Korea (South)	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 Arab Emirates	15 (f)	10 (q)	10
United Kingdom	25 (d)	15 (b)	25 (c)
United States	25 (r)	15 (b)	25 (c)(e)
Vietnam	15 (k)	15	15
Nontreaty countries	15/30 (x)	20/30 (x)	20/30 (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 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, Japan, Norway, and the United Kingdom, 15%) if the recipient holds 10% (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, Switzerland and the United Arab Emirates, partnerships do not qualify for the 10% rate. Under the treaty with the United Arab Emirates, the dividends are exempt from tax if the beneficial owner of the dividends is the government of a contracting state, a local government, a political subdivision, a local authority or any of their governmental institutions or entities.
  - (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) Under the treaty with Romania, 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. Under the treaty with the United Arab Emirates, interest is exempt from tax if it is derived with respect to a loan made, guaranteed, or insured by the government of the other contracting state or a political subdivision, local authority or local government, including financial institutions wholly owned by the government or any other instrumentality, as agreed by the contracting states.
  - (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, secret formulas or processes
  - The use of, or the right to use, industrial, commercial, or scientific equipment
  - 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
  - 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 15%. This credit represents the difference between the regular corporate income tax rate of 30% and the 15% preferential rate. The 15% rate also applies if the dividend is not taxed in the recipient's country of domicile.
- (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 (f)

- (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 paid to nonresidents.
- (d) The tax rate may be reduced by a tax treaty or under domestic law if certain conditions are met.
- (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.
- (f) No more than 50% of the original loss can be deducted in one year.

## 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 in Poland. For this purpose, the concept of management 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 non-resident company is generally taxed according to the same rules as a Polish company, but only on its Polish-source income. Partnerships are tax transparent except for foreign partnerships that are treated in their countries as taxpayers subject to corporate income tax.

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 foreign-source income.

**Tax rates.** The general corporate income tax rate is 19%.

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 tax 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 value for tax purposes) and sales expenses from the sales proceeds. If the sales price differs substantially from market value, the tax office may apply an independent expert valuation.

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 under domestic regulations 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 by certain deadlines. 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 (that is, a period covering the second half of the year of incorporation and the subsequent year). In the event of a liquidation, 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 do not need to be filed. In certain circumstances, a company may benefit from a simplified advance tax payment procedure.

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, plus 2%. It cannot be lower than 8%. The penalty interest rate was 14% on 15 December 2011.

**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 who is the beneficial owner of the dividend 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, Liechtenstein 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:

- They are subject to income tax in Poland, an EU/EEA member state or Switzerland on their total income, regardless of the source of the income (the exemption applies also to dividends or other profit distributions paid to permanent establishments, located in EU/EEA member states or in Switzerland, of such companies).
- They do not benefit from income tax exemption on their total income (which should be documented with their written statement).
- For at least two years, they hold directly at least 10% (25% for Swiss recipients) of the capital of the company paying the dividend. The two-year holding period can be met after payment is made. If the two-year holding period is then not met (for example, the shareholder disposes of the shares before the two-year holding requirement is met), the shareholder must pay the

withholding tax and penalty interest. Broadly, except for some specific cases, full ownership of the shares is required.

- The Polish payer documents the tax residency of the recipient with a certificate of residency issued by the competent foreign tax authorities (if payments are received by a permanent establishment, some other documents may be needed).
- A legal basis exists for a tax authority to request information from the tax administration of the country where the taxpayer is established, under a double tax treaty or other ratified international treaty to which Poland is a party.

**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 to nonresidents. This withholding tax may be eliminated or reduced if the following conditions are satisfied:

- The payer can document the tax residency of the recipient (beneficial owner) 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.
- The relevant treaty allocates taxing rights to the country of the service provider or recipient, 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. Until 30 June 2013, withholding tax may be imposed at a maximum rate of 5% if certain conditions are met.

**Foreign tax relief.** Under its tax treaties, Poland exempts foreign-source income from tax or grants a tax credit (usually with respect to dividends, interest and royalties). Broadly, foreign taxes are creditable against Polish tax only up to the amount of Polish tax attributable to the foreign income.

In addition to a credit for tax on dividends (that is, a deduction of withholding tax; direct tax credit), Polish companies (or Polish permanent establishments of EU/EEA resident companies) may also claim a credit for the tax on profits generated by their subsidiaries in other treaty countries (indirect tax credit). A Polish company receiving a dividend from a subsidiary that is not resident in the EU, 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. The total deduction is limited to the amount of Polish tax attributable to the foreign income.

Foreign-source dividends are added to other profits of a Polish taxpayer taxed at the standard 19% rate. Dividends from companies resident in EU/EEA states or in Switzerland may be exempt in Poland if the Polish recipient holds directly at least 10% (25% in the case of Switzerland) of the share capital of the foreign subsidiary for an uninterrupted period of at least 2 years. The share-

holding period requirement does not have to be met as of the payment date.

The above exemption does not apply if income from the participation, including redemption proceeds, is received as a result of the liquidation of the legal entity making the payments.

The domestic exemption or tax credit can be applied if a legal basis exists for a tax authority to request information from the tax administration of the country from which the income was derived, under a double tax treaty or other ratified international treaty to which Poland is a party.

Broadly, except for some specific cases, full ownership of the shares is required to claim the credits and exemptions discussed above.

### 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 practice, taxable income is arrived at by adjusting accounting results for tax purposes. Taxpayers must maintain accounting records in a manner that allows the tax base and the amount of tax payable to be determined. Otherwise, taxable income may be assessed by the tax authorities.

In general, taxable revenues of corporate entities carrying out business activities are recognized on an accrual basis. Revenues are generally recognized on the date of disposal of goods or property rights or the date on which services are supplied (or supplied in part), but no later than the following:

- Date of issuance of the invoice
- Date of receipt of payment

If the parties agree that services of a continuous nature are accounted for over more than one reporting period, revenue is recognized on the last day of the reporting period set out in the contract or on the invoice (however, not less frequently than once a year).

The definition of revenues includes free and partially free benefits.

Expenses are generally allowed as deductions if they relate to taxable revenues derived in Poland, but certain expenses are specifically disallowed.

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
Office furniture	20
Computers	30
Motor vehicles	20
Plant and machinery	4.5 to 20

For certain types of assets, depreciation rates may be increased. Companies may also apply reduced depreciation rates.

Intangibles are amortized over a minimum period, which usually ranges from 12 months (for example, development costs) to 60 months (for example, goodwill).

**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 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 agreement on setting up a tax group must be concluded for a period of at least three years. It must be concluded in front of a notary public and registered with the tax office.
- 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.
- The members of the group may not benefit from any corporate income tax exemptions based on laws other than the Corporate Income Tax Law.

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.

Effective from 1 January 2011, the standard rate of VAT is 23%. Lower rates may apply to specified goods and services. The 0% rate applies to exports and supplies of goods within the EU. 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 EU, EEA

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 a transaction in addition to its form.

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
- 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 Income Tax Law and the Personal Income Tax Law.

Under the Corporate Income 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 [place of management] 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.
  - 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 the domestic entities.
  - 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 the entities.

Polish tax law enumerates transfer-pricing methods that must be followed by the tax authorities in testing the prices applied in intercompany transactions (taxpayers do not have to apply these methods). The tax law provides for the following traditional transfer-pricing methods:

- The comparable uncontrolled price method (preferable one)
- The resale-price method
- The cost-plus method

If the above methods are inapplicable, the transactional methods (profit-split method and transactional net margin method) can be considered.

Under the tax law, on the request of the tax authorities, taxpayers conducting transactions with related parties exceeding certain statutory thresholds (of a relatively low value) must prepare specific tax documentation regarding these transactions and present it to the tax authorities or tax inspection authorities within seven days after the date of the request. The documentation must be in Polish and must contain the following:

- A description of the functions of the parties to the transaction (including assets engaged and risks assumed)
- 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 in determining the transaction value
- A description of the benefits that the entity required to prepare the documentation expects to obtain from the purchase of intangible assets or services, such as advisory or financial services, granting of licenses or purchase of intellectual property

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, additional income that is assessed in connection with intercompany transactions that are not covered with the documentation 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 is assessed in Poland and

if no transfer-pricing documentation is submitted by the statutory deadline, a corporate income tax rate of 50% 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.

The Advanced Pricing Agreement (APA) regulations entered into force on 1 January 2006. An APA concluded for a particular transaction is binding on the tax authorities with respect to the method selected by the taxpayer. APAs may apply to transactions that have not yet been executed or transactions that are in progress when the taxpayer submits an application for an APA.

In June 2006, Poland ratified the EU convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).

## F. Treaty withholding tax rates

The standard withholding tax rates are 19% for dividends and 20% for interest and royalties. The rate may be reduced under a double tax treaty on presentation of a certificate of tax residence or, in some cases, under domestic regulations. The following table shows the withholding tax rates under Polish double tax treaties.

	<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
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 (y)	0/5 (k)	5
France	5/15 (a)	0	0/10 (p)
Georgia	10	0/8 (k)	8
Germany	5/15 (jj)	0/5 (k)	5
Greece	19	10	10
Hungary	10	0/10 (k)	10
Iceland	5/15 (y)	0/10 (k)	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
India	15	0/15 (k)	20 (bb)
Indonesia	10/15 (c)	0/10 (k)	15
Iran	7	0/10 (k)	10
Ireland	0/15 (kk)	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 (South)	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	0/10 (hh)	0/5 (k)	5
Mexico	5/15 (d)	0/10/15 (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	0/15 (hh)	0/5 (k)	5
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
Qatar	5	0/5 (k)	5
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
Spain	5/15 (d)	0	0/10 (f)
Sri Lanka	15	0/10 (k)	0/10 (l)
Sweden	5/15 (d)	0	5
Switzerland	0/15 (ll)	10	0 (ii)
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)	0/5 (k)	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 (y)	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.
- (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
  - Research and advisory, supervisory or management servicesThe 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 that applied to the Union of Serbia and Montenegro should apply to the Republics of Montenegro and Serbia.
- (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 5% rate applies if the beneficial owner is a company (other than a partnership) that controls directly at least 25% of the capital of the company paying the dividends.
- (z) The lower rate applies if the owner of the dividends is the government or a government institution.
- (aa) The 10% rate applies to interest paid to banks and insurance companies and to interest on bonds that are regularly and substantially traded.
- (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
  - At least 10% of the payer, provided the value of the investment amounts to at least €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.
- (hh) 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 company paying the dividends on the date on which the dividends are paid and has held the capital or will hold the capital for an uninterrupted 24-month period that includes the date of payment of the dividends.
- (ii) The rate is 10% if Switzerland imposes a withholding tax on royalties paid to nonresidents.
- (jj) The lower rate applies if the recipient of the dividends is a company (other than a partnership) that owns directly at least 10% of the payer. Certain limitations to the application of the preferential rates may apply.
- (kk) The lower 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. Under the Ireland treaty, if Ireland levies tax at source on dividends, the 0% rate is replaced by a rate of 5%.
- (ll) The 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls. The 0% rate may also apply to dividends paid to certain pension funds.

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## Portugal

(Country code 351)

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**A. At a glance**

Corporate Income Tax Rate (%)	
Corporate Income Tax	25 (a)
Municipal Surcharge	1.5 (b)
State Surcharge	3/5 (c)
Branch Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (d)
Withholding Tax (%)	
Dividends	
Paid to Residents	25 (e)
Paid to Nonresidents	25 (f)
Interest	
Shareholders' Loans	
Resident Shareholders	25 (e)
Nonresident Shareholders	25 (f)
Bonds Issued by Companies	
Resident Holders	25 (e)
Nonresident Holders	25 (f)(g)(h)(i)
Government Bonds	25 (i)
Bank Deposits	
Resident Depositors	25 (e)
Nonresident Depositors	25 (f)
Royalties	
Paid to Residents	16.5 (e)
Paid to Nonresidents	15 (f)
Payments for Services and Commissions	
Paid to Residents	0
Paid to Nonresidents	15/25 (j)
Rental Income	
Paid to Residents	16.5 (e)
Paid to Nonresidents	16.5 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (k)

- (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) A state surcharge of 3% is imposed on the taxable profit determined for I.R.C. purposes between €1,500,000 and €10 million. If the taxable profit for I.R.C. purposes exceeds €10 million, the state surcharge is levied at a rate of 5% on the excess.
- (d) See Section B.
- (e) 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.
- (f) These rates may be reduced by tax treaties or by European Union (EU) Directives.
- (g) Applicable to interest from private and public company bonds.
- (h) 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.
- (i) 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. The 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 (except central banks and other government agencies).

- (j) The 15% rate applies to most services and commissions. The 25% rate applies to services performed by artists and sportspersons and to fees paid to board members. This tax does not apply to communication, financial and transportation services. The tax is eliminated by most tax treaties, but this may not be the case for income derived from the performance of artists and sportspersons.
- (k) For tax losses computed before 2010, the prior six-year carryforward period applies. For tax losses computed in 2010, a four-year carryforward period applies. For tax losses used from 1 January 2012, the amount deductible each year is capped by 75% of the taxable profit for the year.

## 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*).

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 2012, I.R.C. is levied at the following rates.

<b>Type of enterprise</b>	<b>Rate (%)</b>
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,	

Type of enterprise	Rate (%)
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	25
Entities other than companies with a head office or effective management control in Portugal, whose principal activity is not commercial, industrial or agricultural	21.5
Permanent establishments	25
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	25
Income from government bonds	25
Revenues derived from the use of, or the right to use, equipment	15
Other revenues from the application of capital	25
Payments for services rendered or used in Portugal, and all types of commissions	15*
Investment income paid to tax-haven entities	30

\* 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 30% final withholding tax rate applies if income is paid or made available in a bank account and if the beneficial owner is not identified. A 30% final withholding tax rate also applies to investment income obtained by an entity located in a tax haven.

A municipal surcharge (*derrama municipal*) 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 municipal surcharge on companies is 26.5%.

A state surcharge (*derrama estadual*) is also imposed on resident companies and nonresident companies with a permanent establishment in Portugal. The rate of the state surcharge, which is 3%, is applied to the taxable profit determined for I.R.C. purposes between €1,500,000 and €10 million. For taxable profits

exceeding €10 million, a 5% rate of state surcharge is levied on the excess. Consequently, the maximum combined rate of the I.R.C. and the surcharges on companies is 31.5%.

Companies established in the free zones of Madeira and the Azores enjoyed a tax holiday until 2011. The more important of the two, Madeira, is internationally known as the Madeira Free Zone (Zona Franca da Madeira). A new regime has been approved for companies licensed between 2007 and 2013. Under the new regime, the reduced rates are 4% for 2012 and 5% for 2013 through 2020. 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. The new regime is also available for companies licensed before 2007. However, it was subject to a formal option that should have been elected on or before 30 December 2011.

Significant incentives are also available for qualifying new investment projects established before 31 December 2020. To qualify for the incentives, the projects must satisfy the following requirements:

- They must have a value exceeding €5 million.
- They must develop sectors considered to be of strategic importance to the Portuguese economy.
- 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 up to 10 years:

- A tax credit of 10% 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.

Incentives consisting of a tax credit of 10% to 20% and a participation exemption on dividends received from abroad are also available for up to 5 years with respect to qualifying investment projects abroad exceeding €250,000.

Portuguese tax law also provides for tax credits and deductions concerning research and development (R&D) investments, fixed asset investments and creation of jobs.

Small and medium-sized companies held by individuals, venture capital companies and business angels (see *Capital gains*) 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 2011 through 2013.

**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 year of the disposal and ending two years after the year 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 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.
- 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, 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 abroad of the legal seat and place of effective management of a Portuguese company, without the company being liquidated, results in a taxable 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 non-resident 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 legal seat and 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 70% of the preceding year's tax. For companies with turnover exceeding €498,797.90, the total of the estimated payments must equal at least 90% 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 months 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 €1,000, or, if the minimum limit is exceeded, €1,000 plus 20% of the excess with a maximum limit of €70,000
- 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.

*Binding rulings.* A general time frame of 150 days exists in the tax law to obtain a binding ruling. This period can be reduced to 120 days if the taxpayer pays a fee between €2,625 and €26,250 and if the ruling petition with respect to an already executed transaction contains the proposed tax treatment of the transaction as understood by the taxpayer. This tax treatment is deemed to be tacitly accepted by the tax authorities if an answer is not given within the 120-day period.

**Dividends.** Dividends paid by companies to residents and nonresidents are generally subject to withholding tax at a rate of 25%.

On distributions to resident parent companies, the 25% withholding tax is treated as a payment on account of the final I.R.C. due.

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.
- 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.
- 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).

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. The same regime is also available for dividends received from European Economic Area (EEA) subsidiaries.

Dividends paid out of income not subject to effective taxation do not qualify for the participation exemption.

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.

A 100% participation exemption is also available for dividends received from subsidiaries resident in African countries in which Portuguese is the official language or East Timor if the following conditions are satisfied:

- Direct 25% holding
- Two-year minimum holding period
- The engagement of the subsidiary in active business activities subject to an effective tax rate of at least 10%

A withholding tax exemption applies to dividends distributed to EU and EEA parent companies owning at least 10% of a Portuguese subsidiary for more than one year. A full or partial refund of the withholding tax may be available under certain conditions. A withholding tax exemption is also available for dividends paid

to a Swiss parent company, but the minimum holding requirements are increased to 25% and two years.

**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 (GAAP), as adjusted by the I.R.C. Code.
- 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.

Effective from 2010, Portuguese GAAP is similar to International Financial Reporting Standards (IFRS). In addition, the tax law has been adapted to the new GAAP, but several adjustments are still required between net accounting profit and taxable profit.

Expenses that are considered essential for the generation or maintenance of profits are deductible. However, certain expenses are not deductible including, but not limited to, the following:

- The tax depreciation of private cars, on the amount of the acquisition price exceeding €25,000 but not exceeding €50,000 (depending on the acquisition date and type of vehicle), 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
- Improperly documented expenses
- I.R.C. and surcharges (see Section B)
- Penalties and interest charges
- Contribution on banking sector (see Section D)

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% or 10%. This rate is increased to 20% for expenses related to private cars if the acquisition price of the car exceeded an amount between €25,000 and €50,000, depending on the acquisition date and type of vehicle.

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., not principally engaged in commercial, industrial or agricultural activities or subject to the Game Tax). The tax authorities may classify an expense as undocumented if insufficient supporting documentation exists.

Certain indemnities and compensation paid to board members and managers (including "golden parachutes") are subject to a special stand-alone tax at a rate of 35%.

A special stand-alone tax at a rate of 35% applies to bonuses and other variable compensation paid to board members and managers, if such compensation exceeds 25% of the annual remuneration and €27,500. This tax does not apply if at least 50% of the payment is deferred over a period of at least three years and conditioned on the positive performance of the company during such period.

A "Robin Hood" tax is levied on both oil production and distribution companies and is charged based on the rise in value of the oil stocks held. For tax purposes, the first-in, first-out (FIFO) method or the weighted average cost method is deemed to be used for the valuation of oil stocks. The positive difference between the gross margin determined based on these methods and the gross margin determined under the accounting method used by the company is subject to a stand-alone tax at a flat rate of 25%. This tax is not deductible for I.R.C. purposes and cannot be reflected in the purchase price paid by the final consumer.

The above stand-alone taxes are imposed regardless of whether the company earns a taxable profit or suffers a tax loss in the year in which it incurs the expenses. In addition, all stand-alone rates are increased by 10% if the taxpayer incurs a tax loss in the relevant year.

**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
- Cost of sales of products cropped from biological assets, which is determined at the time of cropping, less the estimated costs at

the point of sale, excluding transportation and other costs required to place the products in the market

- 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, among others, 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)
- Warranty expenditures
- 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 between €25,000 and €50,000, depending on the acquisition date and type of vehicle.

**Relief for losses.** Tax losses may be carried forward for five years (six years if the losses were computed before 2010 and four years if the losses were computed in 2010). For tax losses used from 1 January 2012, the amount deductible each year is capped by 75% of the taxable profit of the year. 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
- 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 the other resident 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.
- 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.
- The consolidated group may not deduct losses incurred by companies after they leave the group.

The cap of 75% of the taxable profit with respect to deductible losses also applies for tax group purposes.

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.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (IVA), levied on goods and services, other than exempt services	
General rates	
Portugal	23
Madeira	22
(the above rate is effective from 1 April 2012; before that date, the rate is 16%)	
Azores	16
Intermediate rates	
Portugal	13
Madeira	12
(the above rate is effective from 1 April 2012; before that date, the rate is 9%)	
Azores	9
Reduced rates	
Portugal	6
Madeira	5

Nature of tax	Rate (%)
(the above rate is effective from 1 April 2012; before that date, the rate is 4%)	
Azores	4
Social security contributions, on salaries, wages and regular bonuses but excluding meal subsidies, up to a specified amount; paid by	
Employer	20.3/23.75
Employee	9.3/11
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	7.5
Other entities	0.3 to 0.8
Stamp duty	
Loans and mortgages (maximum rate)	0.6
Interest on bank loans	4
Transfer of real estate	0.8
Insurance premiums	3 to 9
Transfer of business as a going concern	5
Contribution on banking sector; imposed on Portuguese resident credit institutions and branches of credit institutions resident outside the EU	
Debt deducted by own funds (Tier 1 and Tier 2; own funds are computed based on the regulations of the Bank of Portugal) and deposits covered by the Deposits Guarantee Fund	0.01 to 0.05
Notional value of derivative financial instruments not stated in the balance sheet	0.0001 to 0.0002

## E. Miscellaneous matters

**Foreign-exchange controls.** Portugal does not impose foreign-exchange controls. No restrictions are imposed on inbound or outbound investments.

**Mergers and reorganizations.** Mergers and other types of corporate reorganizations may be tax-neutral in Portugal if certain conditions are met.

**Controlled foreign entities.** The rules described below apply to controlled foreign entities (CFEs).

A Portuguese resident owning, directly or indirectly, at least 25% in the capital, voting rights or rights to income or estate of a CFE is subject to tax on its allocable share of the CFE's net profit or income. However, if at least 50% of the CFE's capital or rights is owned by Portuguese residents, the percentage described in the

preceding sentence is reduced to 10%. For computing the 25% or 10% threshold, the capital and rights owned, directly or indirectly, by related parties are also considered.

An entity is deemed to be subject to a clearly more favorable tax regime if the entity is not subject to corporate income tax or is 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.

Depending on whether the activities of the CFE include transactions with Portuguese residents or whether they are predominantly addressed to the market of the CFE territory, the imputation of profits or income may not apply.

The income of the CFE 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 may be exempt from tax or subject to a reduced rate but is considered to be resident in Portugal for tax purposes, between a CFE and a Portuguese resident company.

The CFE rules do not apply to entities resident in the EU or EEA if in the latter case a cooperation agreement on tax matters exists and if the taxpayer proves that the incorporation and functioning of the nonresident entity is based on valid economic reasons and that the entity carries out an agricultural, commercial, industrial or service activity.

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.
- The amounts of the payments are not unreasonable.

The nondeductibility of payments to nonresidents subject to a clearly more favorable tax regime also applies if the payments are made indirectly to those entities; that is, the payer knew or should have known of the final destination of such payments. This is deemed to occur if special relations exist between the payer and the nonresident entity subject to a clearly more favorable tax regime or between the payer and the intermediary that makes the payment to the nonresident entity subject to a clearly more favorable tax regime.

**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
- 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. The rule mentioned in the preceding sentence does not apply if the lender is located in a tax haven.

**Tax-planning disclosure.** Certain tax planning (use of low-tax entities, use of partially or fully exempt entities, use of hybrid instruments or entities, use of tax losses or the existence of a limitation or exclusion from responsibility clause for the promoter) must be disclosed to the tax authorities by the entity promoting the planning or by the respective user (in the absence of a locally registered promoter). Significant penalties apply for the lack of reporting.

## 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
Chile	10/15 (c)	5/10/15 (n)	5/10 (o)
China	10	10	10
Cuba	5/10 (j)	10	5
Czech Republic	10/15 (b)(d)	10	10
Denmark	10 (b)	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
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
Indonesia	10	10	10
Ireland	15 (b)	15	10
Israel	5/10/15 (j)(l)	10	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 SAR	10	10	10
Malta	10/15 (b)(d)	10	10
Mexico	10	10	10
Moldova	5/10 (j)	10	10
Morocco	10/15 (d)	12	10
Mozambique	10	10	10
Netherlands	10 (b)	10	10
Norway	10/15 (c)	15	10
Pakistan	10/15 (d)	10	10
Poland	10/15 (b)(d)	10	10
Romania	10/15 (d)	10	10
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
South Africa	10/15 (d)	10	10
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 (m)	21.5 (b)	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) The 10% rate applies to dividends paid by a company resident in Israel if the beneficial owner is a company that holds directly at least 25% of the capital of the payer of the dividends and if the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal rate of Israeli company tax.
- (m) See Sections A and B for details.
- (n) The 5% rate applies to interest on bonds and other titles regularly and substantially traded on a recognized market. The 10% rate applies to interest on loans granted by banks and insurance companies as well as to interest from credit sales of machinery and equipment. The 15% rate applies in all other cases.
- (o) The 5% rate applies to the leases of equipment. The 10% rate applies in all other cases.

Portugal has also signed double tax treaties with Guinea, Kuwait and Uruguay, but these treaties are not yet in force.

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## Puerto Rico

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### A. At a glance

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	15
Branch Income Tax Rate (%)	30 (a)
Withholding Tax (%)	
Dividends	10
Interest	0 (b)

Royalties	2 to 29
Branch Remittance Tax	10
Net Operating Losses (Years)	
Carryback	0
Carryforward	7/10 (c)

- (a) This is the maximum tax rate (see Section B). An alternative minimum tax (AMT) may apply instead of the regular tax. The AMT is the greater of the regular AMT at a rate of 20% or 1% of the purchases of personal property from related persons made by a business that has gross revenues in excess of \$50 million for the three consecutive preceding years.
- (b) A 29% withholding tax is imposed on interest paid to foreign corporations on related-party loans.
- (c) Net operating losses incurred during tax years beginning after 31 December 2004 and before 31 December 2012 may be carried forward for 10 years. For all other years, the carryforward period is seven years.

**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 treated as pass-through entities. Accordingly, their partners are taxed on their distributive shares of the income and expenses of the partnership. Elections for Special Partnerships, which engage only in specified activities and are also treated as pass-through entities, are not available after 31 December 2010.

Limited liability companies are subject to tax in the same manner as regular corporations. However, they can elect to be taxed as partnerships or pass-through entities under certain conditions. If a limited liability company is treated as a partnership or a pass-through entity for federal tax purposes or in a foreign jurisdiction, it is treated as a partnership for Puerto Rico tax purposes. However, a limited liability company that is treated as a partnership for federal tax purposes or in a foreign jurisdiction is not treated as a partnership for Puerto Rico tax purposes if the entity has received a tax grant under any of the tax incentives laws.

**Rates of corporate income tax.** The corporate income tax rates range from 20% to 30%. Special rules may apply to controlled group corporations in determining the net income subject to additional tax. Corporations and partnerships can make an irrevocable election to compute their tax liability based on the provisions of the previous Puerto Rico Internal Revenue Code of 1994, for the 2011 tax year and the four subsequent years. This election needs to be made with the 2011 tax return. After the election is made, it is effective for the complete five-year period.

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*) 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.

Under the Puerto Rico Tax Incentives Act of 1998, which expired on 30 June 2008, exempt businesses are subject to a flat tax rate ranging from 2% to 7% on their IDI. Dividends are not subject to withholding tax. Royalties are subject to a withholding tax rate ranging from 2% to 15%.

The Economic Incentives for the Development of Puerto Rico Act of 2008 (the 2008 Act) took effect on 1 July 2008. The exemption period under the 2008 Act is 15 years, regardless of the location of the exempt business.

The 2008 Act 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
- Entities that provide services subcontracted in Puerto Rico or that provide key supplier services rendered in Puerto Rico at a commercial scale and on a continuous basis to exempt manufacturing businesses
- Entities engaged in the manufacturing of high-technology industrial units for the production of energy for use in Puerto Rico, other than fossil fuels, and in the assembly of equipment for the generation of such energy
- Entities engaged in the construction of social-interest homes (affordable or low-interest housing)
- Entities dedicated to recycling activities
- Entities operating at a commercial scale that are engaged in the development of licensed or patented software
- Certain strategic projects, and entities devoted to the research, development, manufacture, transport, launch and operation of satellites from Puerto Rico
- Entities engaged in the development of service centers for processing or warehousing of data
- Value-added activities for the operation of ports

The 2008 Act provides for a 4% flat tax rate on IDI derived by companies that obtain exemption grants. An additional 0.5% reduction in the tax rate on IDI is available to exempt businesses operating in a zone of low or intermediate industrial development. For companies with pioneer status, the flat tax rate ranges from 0% to 1%. The 2008 Act provides a 100% tax exemption for IDI derived from businesses located in the municipalities of Culebra and Vieques for the first 10 years. The 2008 Act provides for no withholding tax on dividends and a 12% withholding tax on royalties paid by exempt businesses to entities not engaged in trade or business in Puerto Rico. Exempt businesses can take advantage of a 2% alternative tax on royalties instead of the 12% withholding tax, but such businesses are subject to a tax at a rate of 8% on IDI. Manufacturers may benefit from a 100% exemption from excise taxes and sales and use tax on raw materials, machinery and equipment. As provided in previous tax incentives acts, the 2008 Act provides a 90% property tax exemption and a 60%

municipal license tax exemption. It grants certain special deductions and credits with respect to the following:

- Job creation
- Energy costs
- Use of intangible property
- Strategic projects
- Research and development
- Net operating losses
- Investments in buildings, structures, machinery and equipment
- 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, or under the Puerto Rico Tourist Development Act of 2010, 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 AMT is the greater of the regular AMT at a rate of 20% or 1% of the purchases of personal property from related persons made by a business that has gross revenues in excess of \$50 million for the three consecutive preceding years. The AMT applies to the extent that the AMT exceeds the regular tax liability.

For purposes of the AMT, personal property refers to tangible property used in a trade or business in Puerto Rico except for raw materials or intermediate products used in manufacturing and alcoholic beverages.

A related person is a member of a controlled group having 50% ownership.

Alternative minimum taxable income is determined by adding back certain tax preferential deductions to the taxable income computed for regular income tax purposes. For purposes of the AMT calculation, the deduction for payments with respect to intercompany services incurred outside Puerto Rico must be added back, unless these payments are subject to income tax in Puerto Rico.

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 15%.

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 three months; however, the tax 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.

Tax returns of partnerships, Special Partnerships and limited liability companies that elected to be treated as partnerships and corporations of individuals, among others, are due on the fifteenth day of the third month after the close of the tax year. Extensions are also available for up to three months. However, the tax must be fully paid by the original due date.

**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 10% 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 is based on the asset classification. The following three depreciation methods are allowed in Puerto Rico:

- Straight-line
- A method similar to the U.S. ACRS method
- 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 buildings
- Manufacturing
- Tourism
- 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.

The depreciation expense deduction applicable to automobiles has been replaced with a limited mileage-based deduction, except, under certain circumstances, for lease business (operating leases) and taxi or limousine transportation business.

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.

Intangible property (other than goodwill) acquired by purchase or developed after 1 September 2010 is depreciated using the straight-line method over the lesser of 15 years or the useful life of the property.

**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 following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Special excise tax; imposed on the acquisition from a related party of personal property manufactured in Puerto Rico and related services by a nonresident foreign corporation or partnership; if the provider has gross receipts in excess of \$75 million for any of the three preceding taxable years and if certain other requirements are met; 2012 rate (the rate will decrease annually until it reaches 1% in 2016 when it expires)	3.75
Excise tax on purchases from a related person on tangible personal property used in a trade or business in Puerto Rico; the tax applies to purchases from related parties by businesses that had gross revenues in excess of \$50 million;	

Nature of tax	Rate (%)
for the three preceding consecutive years (the AMT is now the greater of the regular AMT or 1% of the purchases of personal property from related persons; for further details, see Section B)	1
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%)	6
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 \$110,100 (for 2012); paid by Employer Employee Wages in excess of \$110,100 (for 2012); paid by Employer Employee	7.65 7.65 1.45 1.45
Municipal license tax; on gross sales volume (if volume exceeds \$3 million for tax years beginning on or after 1 August 2008 [\$1 million for tax years beginning before that date], a financial statement audited by a certified public accountant [CPA] 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
Property taxes (if volume exceeds \$3 million for tax years beginning on or after 1 August 2008 [\$1 million for tax years beginning before that date], a financial statement audited by a CPA licensed in Puerto Rico 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**

**Financial statements requirements.** All entities engaged in trade or business in Puerto Rico must submit specified financial statements with their income tax returns.

Audited financial statements are required if the volume of business is equal to or greater than \$3 million. Not-for-profit corporations and entities with a volume of business of less than \$3 million are not required to file audited financial statements.

Financial statements must be prepared in accordance with U.S. generally accepted accounting principles (GAAP) and issued by a certified public accountant (CPA) licensed to practice in Puerto Rico. Other detailed rules apply to the preparation of financial statements, including rules regarding foreign corporations and related entities.

Entities engaged in a trade or business in Puerto Rico that have a volume of business in excess of \$3 million must submit, together with their property and volume of business declaration tax returns, audited financial statements certified by a CPA licensed to practice in Puerto Rico. In addition, audited financial statements are required to be attached to the annual report filed with the Secretary of State in the case of a corporation with a volume of business in excess of \$3 million for tax years beginning on or after 1 August 2008. For corporations with a volume of business of \$3 million or less, a balance sheet with relevant footnotes, prepared by a person with general knowledge in accounting, must accompany the annual report filed with the Secretary of State.

If foreign corporations do not keep available books of account and supporting documents in Puerto Rico, all of their tax deductions may be denied. 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 jurisdictions.

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## A. At a glance

Corporate Income Tax Rate (%)	10
Capital Gains Tax Rate (%)	10
Branch Tax Rate (%)	10
Withholding Tax (%)	5/7
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

## 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 that are tax resident in Qatar are exempt from tax. If such entities are tax resident outside Qatar, they are subject to tax in Qatar.

**Rates of corporate income tax.** Income is subject to tax at a standard rate of 10%.

Petroleum companies are taxed at a rate of 35% (or rates ranging from 35% to 55% for agreements that precede the enactment of the 2009 Income Tax Law) on their taxable income. Taxable income is determined in accordance with the provisions of the underlying production-sharing contract or development and fiscal agreement. Petroleum operations are defined by law as the exploration for petroleum, improving oil fields, drilling, well repair and completion, the production, processing and refining of petroleum and the storage, transport loading and shipping of crude oil and natural gas.

Foreign shipping and aviation companies are exempt from tax in Qatar if the Qatari shipping and aviation companies enjoy similar reciprocal treatment in the respective foreign countries.

The income of not-for-profit entities that are registered in Qatar or in another country is exempt from tax.

**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
- 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 periods of exemption range from three years to six years, depending on which legislative body approves the exemption periods.

Under Law No. 20 of 2008, public companies listed on the Doha Securities Market (the local stock exchange) are exempt from tax. This incentive is designed to promote increased foreign investment in the stock exchange.

The income of businesses operating in the Qatar Financial Centre (QFC) is subject to a standard rate of tax of 10%. 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
- 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
- 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.** Within 30 days after beginning a taxable activity in Qatar, a taxpayer must register with the Qatar tax authorities and obtain a tax card.

The tax year runs from 1 January to 31 December, and a taxpayer must use this accounting period unless approval is obtained for another 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.

Audited financial statements must be submitted with the tax declaration if any of the following circumstances exist:

- The capital of the taxpayer exceeds QR 100,000.
- The taxpayer's total taxable income exceeds QR 100,000.
- The head office of the taxpayer is located outside Qatar.

The tax declaration must be certified by an accountant in practice in Qatar who is registered with the Ministry of Economy and 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 are levied at a rate of QR 100 per day, subject to a maximum of QR 36,000. The penalty for late payment equals 1.5 % of the tax due for each month or part of a month for which the payment is late.

The tax administration may issue tax assessments based on deemed profit or reassess by applying market prices to certain related-party transactions in certain circumstances. The tax law provides for a structured appeals process with respect to such tax assessments. The appeals procedure consists of the following three stages:

- Correspondence and negotiations with the tax administration
- Formal appeal to an Appeal Committee
- The commencement of a case in the judicial courts

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. This period is increased to 10 years if a taxpayer did not file a tax return or failed to register with the tax department.

**Withholding taxes.** Under the new Qatar Tax Law No. 21 of 2009, which took effect on 1 January 2010, payments made to nonresident entities with respect to activities not connected with a permanent establishment in Qatar are subject to a final withholding tax at rates of 5% or 7%. The withholding taxes apply to service providers that perform services in Qatar and that are unable to produce a tax card as evidence of having a tax nexus in Qatar.

The 5% rate applies to royalties and technical fees, including payments for the following:

- Computer services, such as program development, network services, maintenance services and other services
- Engineering services in all fields, such as mechanical, electrical and civil
- Designs prepared by engineers and consultants
- Maintenance of industrial equipment provided by technical experts in management
- Legal consultation and external auditing
- Training services in any of the technical fields mentioned above

The 7% rate applies to the following:

- Interest payments
- Directors' fees
- Brokerage, commissions and other payments with respect to contracts for services conducted partially in Qatar including the following:
  - Advertising and promotion services
  - Intermediary services and commercial representation
  - Recruitment services
  - Cleaning services
  - Organizing events

- Administration services (for example, organizing appointments, books and deliveries)

Companies or permanent establishments in Qatar that make the above payments to nonresident entities must deduct tax at source and remit the tax to the Public Revenues and Taxes Department by the 15th day of the month following the month in which the payment is made.

**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. Income distributed from profits that have already been subject to Qatar taxation are not subject to double taxation in the hands of the recipient if such income is included in the investment income of a taxpayer. Dividends paid by an entity that has a tax exemption are exempt from tax.

**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 that are included in taxable income:

- Interest derived outside Qatar from amounts generated by taxable activity carried on in Qatar
- Revenues earned from an activity performed in Qatar including trading, contracting and the provision of services
- Revenues earned from the partial or total performance of a contract in Qatar
- Service fee income received by head offices, branches or related companies
- Certain dividend income and capital gains on real estate
- Interest on loans obtained in Qatar

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*). Self-employed individuals may choose to deduct 30 % of their total income instead of all of the expenses and costs that are allowed to be deducted. Expenses for entertainment, hospitality, meals, holidays, club subscriptions and client gifts are subject to restrictions.

**Inventories.** Inventories must be valued using international accounting standards.

**Provisions.** General provisions, such as bad debts and stock obsolescence, are generally not allowed. Specific bad debts that are written off are deductible to the extent that 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 and, in general, provisions are allowable up to a ceiling of 10% of net profits.

**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.

**Interest paid to head office.** Interest that is paid by a permanent establishment (branch in Qatar) to its overseas head office or other related party outside Qatar is not deductible. Interest payments by a subsidiary company to its parent company or an affiliate are allowable deductions. However, these interest payments are subject to withholding tax.

**Tax depreciation.** For purposes of tax depreciation, fixed assets are categorized into two groups. These groups are discussed below.

*Group 1.* Assets in Group 1 are depreciated using the straight-line method based on the historical cost. The depreciation is calculated from the acquisition date of the asset.

Annual depreciation is calculated according to the following formula:

$$\text{Depreciation} = \frac{\text{Historical cost} \times \text{depreciation rate} \times \text{days asset is held}}{365}$$

The following are the annual depreciation rates.

<b>Type of asset</b>	<b>Rate</b>
Buildings and constructions, including roads, bridges, pipelines, storage tanks and port ducts inside the establishment, and excluding ready-made light constructions	5%
Ships and boats	10%
Airplanes and helicopters	20%
Drilling instruments	15%
Intangible assets	
Pre-establishment expenses	50%
Trademarks, patents and similar items	Amortized on the expected life of the asset, but the annual amortization allowance may not exceed 15%

*Group 2.* Assets in Group 2 are depreciated using the reducing-balance method based on the value of each subgroup at year-end.

The value of each subgroup is determined based on the following calculation.

Tax net book value as of end of preceding year	X
+ Acquisition costs (additions) in current year	X
– Sales proceeds in current year	<u>(X)</u>
= Tax net book value as of 31 December of current year	<u>(X)</u>

Depreciation is calculated by applying the depreciation rate to the closing value of the subgroup.

The following are the annual depreciation rates.

Subgroup	Assets	Rate (%)
A	Computer hardware and software and annexes	33.33
B	Machinery, plant, equipment, electrical devices, cars, vehicles, trucks and cranes	20
C	Office furniture, fixtures and fittings, and other assets	15

If the value of a subgroup does not exceed QR 5,000 after deducting the annual depreciation, this value is deducted from the taxable income for the year.

*Departures from rates.* 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 of Finance.

**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.

**Antiavoidance legislation.** The Income Tax Law contains two anti-avoidance provisions. The tax authorities may 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.

If a company carries out a transaction with a related party that reduces the company's taxable income, the taxpayer must prove that the transaction between the parties was based on an arm's length price. In addition, the tax authorities look at the substance of a transaction or commercial structure rather than its legal form, particularly if a taxpayer may be structuring transactions with the primary aim of tax minimization.

**Transfer pricing.** Transactions between related parties must be based on an arm's length principle and the price of the transaction should be determined based on the comparable uncontrolled price (CUP) method. If the CUP is not applicable to the transaction, a taxpayer must obtain approval from the tax authorities for the adoption of an alternative pricing method. The tax authorities look at the transfer-pricing guidance contained in the Organization for Economic Cooperation and Development (OECD) transfer-pricing guidelines in making a determination of an acceptable alternative pricing method.

**Thin capitalization.** Interest paid to banks and financial institutions relating to amounts borrowed for operations (working capital) in

Qatar may normally be deducted. However, interest paid to group or related companies outside of Qatar may be disallowed unless it is proven that the funds were specifically borrowed to finance the working capital needs of operations in Qatar.

**Supply and installation contracts.** Profits from “supply only” operations in Qatar are exempt from tax because the supplier trades “with” but not “in” Qatar. If a contract includes work elements that are performed partially outside Qatar and partially in Qatar and if these activities are clearly separated in the contract, the revenues from outside Qatar are not taxable in Qatar.

Similarly, with respect to an engineering, procurement and construction contract for a project in Qatar, the obligation to perform construction work in Qatar may bring the revenues arising outside Qatar into the Qatar tax net unless the contract clearly includes a split of revenue between work done in Qatar and work done outside Qatar.

**Withholding of final payments.** All ministries, government departments, and public and semipublic establishments must withhold final payments (retentions) from certain companies or branches of foreign companies.

The following guidance applies to payment retention with respect to companies and branches registered in Qatar:

- Retention does not apply to payments made to a Qatar limited liability company with commercial registration in Qatar and a valid tax card.
- Retention does not apply to payments to a Qatar permanent branch with commercial registration in Qatar and a valid tax card.
- For a Qatar temporary branch with commercial registration in Qatar for a specific project and a valid tax card, 3% retention applies to the contract value, excluding supply and offshore services value.
- For a nonresident company with no commercial registration in Qatar and no tax card, retention does not apply. Instead, withholding tax applies.

In addition, the following rules must be followed with respect to the retention process:

- 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 3% of the contract value of services performed in Qatar. 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.

## E. Tax treaties

Qatar has entered into double tax treaties with Armenia, Azerbaijan, Belarus, China, Cuba, Cyprus, France, India, Indonesia, Korea (South), Lebanon, Luxembourg, Macedonia, Malaysia, Nepal, the Netherlands, Norway, Pakistan, Romania, the Russian Federation, Senegal, Seychelles, Singapore, Sri Lanka, Syria, Tunisia, Turkey, the United Kingdom, Venezuela and Yemen.

Qatar has also signed treaties that are not yet effective with Algeria, Bangladesh, Belgium, Italy, Jordan, Malta, Morocco, the Philippines, Poland, Sudan and Switzerland.

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**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	25
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	7 (g)

(a) See Section B.

(b) These withholding tax rates are standard and final. They can be reduced under double tax treaties or European Union (EU) directives.

(c) This tax may be reduced to nil for dividends paid to a legal entity residing in another EU member state or in a European Free Trade Association (EFTA; consisting of Iceland, Liechtenstein and Norway) member state or to a permanent establishment of an entity residing in an EU or EFTA member state, if certain conditions relating to the dividend recipient and dividend payer are satisfied. These conditions are described in *Dividends* in Section B. Dividends paid by Romanian legal entities to pension funds resident in an EU or EFTA member state, as defined by the law of such state, are exempt from withholding tax in Romania.

(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 from public debt instruments in national and foreign currency
  - Interest related to instruments issued by the National Bank of Romania to carry out monetary policy
  - Interest paid by Romanian legal entities to pension funds resident in an EU or EFTA member state, as defined by the law of such state
- (f) The withholding tax rate is 0% for interest and royalties if certain conditions are satisfied, including the following principal conditions:
- The beneficial owner of the interest or royalties is a legal person resident in an EU or EFTA member state or a permanent establishment of an entity resident in such a state.
  - The beneficial owner of the 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 date of payment of the interest or royalties.
- (g) Annual tax losses incurred in 2009 and subsequent years may be carried forward for seven years (five years for losses incurred before 2009) and are not adjusted for inflation.

## 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 satisfies any of the following conditions:

- It is incorporated in Romania.
- Its place of effective management and control is located in Romania.
- It is a legal entity that has its headquarters in Romania and that is incorporated in accordance with the European legislation.

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*).

**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 their place of effective 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 certain consortia. 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
- A building site that exists for a period exceeding six months
- The place in which an activity continues to be carried out with the assets and liabilities of a Romanian legal person subject to a cross-border reorganization

Foreign companies are also normally taxable in Romania at the standard corporate income 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*).

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.

*Corporate income tax.* The Fiscal Code contains measures allowing companies to claim accelerated depreciation in certain circumstances.

The Fiscal Code allows “sponsorship” expenses to be claimed as a credit against corporate income 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
- 20% of the corporate income tax due

Beginning in 2009, dividends reinvested for the purpose of securing and creating new jobs for the business development of Romanian legal entities distributing the dividends are exempt from dividend tax. Dividends invested in the share capital of another Romanian legal entity to create new jobs or to develop its activities are exempt from dividend tax.

*Research and development costs.* Taxpayers can benefit from an additional allowance equal to 20% of eligible costs for research and development (R&D) activities.

*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 corporate income 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)
- Personal 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
- 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 offshore areas with water deeper than 100 meters (328 feet)
- 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 producers

*Free-trade zones.* The following tax benefits are available to companies performing activities in free-trade zones:

- Value-added tax (VAT) exemption applies to supplies of goods to be placed in a free-trade zone and to supplies of goods performed in a free-trade zone.
- Non-Community goods introduced into free-trade zones for storage purposes are not subject to customs duties.
- State aid is available for investments performed in free-trade zones.

*Property taxes.* Local councils may grant building and land tax exemptions to legal entities, subject to the state-aid regulations.

**Capital gains.** Capital gains are included in taxable income and taxed at the normal corporate income tax rate. Capital gains derived by nonresident 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 (shares) in a Romanian company, or a company with fixed assets that primarily consist of, directly or indirectly, immovable property located in Romania

Certain exemptions apply to income derived by nonresident collective placement bodies without corporate status (for example, Romanian entities that attract financial resources for investment, according to specific legislation) from the transfer of value titles (securities participation titles in open funds, and other financial instruments, such as derivatives) and participation titles held directly or indirectly in Romanian companies, as well as to income derived by nonresidents from the transfer on a foreign capital market of participation titles held in a Romanian company and of value titles.

**Administration.** In general, the tax year is the calendar year.

Under the corporate income tax law, payers of corporate income tax (for example, companies, branches and permanent establishments) must file tax returns and pay corporate income tax quarterly (computed based on actual numbers) by the 25th day of the first month of the following quarter.

As an exception to the general rule, the payments made by banks are advance payments based on the corporate income tax for the preceding year, adjusted by the inflation rate. This rule does not apply 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.

Beginning with 2013, all companies must also follow the advance payment procedure.

In most cases, the annual corporate income tax declaration must be filed and any balance of annual corporate income tax must be paid by 25 April of the following year. However, taxpayers that finalize the closing of the preceding financial year by 25 February must submit annual corporate income tax returns and pay the related tax by such date.

Companies ceasing to exist must submit a final tax return and pay the corporate income tax based on special rules.

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
- Certain specified legal persons, individuals and bodies: 120 days
- 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 usually 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. For the late payment of tax liabilities, the following late payment interest and late payment penalties are due (except where otherwise provided):

- Late payment interest, computed at 0.04% per day of delay
- Late payment penalties for outstanding tax liabilities of more than 30 days, 5% for outstanding tax liabilities paid within the next 60 days and 15% for outstanding tax liabilities remaining unpaid thereafter

**Dividends.** Dividends paid by Romanian companies to resident companies are subject to a 16% withholding tax. The 16% tax is considered a final tax and, accordingly, the dividends are not included in the taxable income 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 10% 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 and legal entities having their social headquarters in Romania (that is, *societas europeae* registered with the Romanian Trade Registry and set up according to European law) to resident individuals and nonresident companies and individuals are generally subject to a 16% withholding tax. However, dividends paid by a Romanian legal entity to a legal entity resident in another EU member state or in an EFTA member state (see footnote [c] in Section A) or to a permanent establishment of an entity residing in an EU or EFTA member state are not subject to withholding tax if certain conditions relating to the legal entity receiving the dividends and to the Romanian income payer are satisfied. These conditions are described below.

The following conditions must be satisfied with respect to the legal entity receiving the dividends:

- The legal entity receiving the dividends must be established in one of the legal forms provided by the law and must be resident in the respective EU or EFTA member state and, according to

the double tax treaties entered into with third countries, may not be resident outside the EU or EFTA from a tax perspective.

- The legal entity receiving the dividends must be liable to pay corporate income tax or other similar tax under the tax law in its state of residence without the possibility of exemption or choice of the fiscal treatment.
- The beneficiary of the dividends must own at least 10% of the participation titles in the Romanian legal entity for an uninterrupted period of at least two years ending on the date of the payment of the dividends.

The Romanian entity paying the dividends must satisfy the following conditions:

- It must be a joint stock company, limited partnership or limited liability company.
- It must be liable to pay corporate income tax without the possibility of exemption or choice of the fiscal treatment.

Effective from 2010, dividends paid by Romanian legal entities to pension funds, as defined by the law of the respective EU or EFTA member state, are exempt from withholding tax in Romania.

The deadline for payment of dividend withholding tax is the 25th day of the month following the month in which the dividends are paid. However, if the dividends are distributed but not paid to shareholders by the end of the year in which the annual financial statements are approved, the tax is due on 25 January of the following year.

**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, among others, are not included in taxable income:

- Dividends received by a Romanian company from another Romanian company. 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 the incorporation of reserves, premiums, profits and similar items, as well as from the evaluation of participation titles and long-term bonds.
- 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 accounting profit before tax
- Employee-related expenses (social expenses), up to 2% of the total salary cost
- Contributions to the legal reserve fund, generally up to 5% of the 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*)
- 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 (see *Tax depreciation*)
- Expenses incurred on behalf of an employee with respect to optional occupational pension and private health insurance schemes, within certain thresholds

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 and 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 not from financial institutions, to the extent that the interest 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.
  - For loans denominated in foreign currencies, an annual interest rate of 6% (beginning in 2010).
- Penalties and fines paid to Romanian or foreign authorities.
- 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 corporate income 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 corporate income tax due, subject to certain limitations (see Section B).

**Inventories.** Under Romanian law, inventories of raw materials and merchandise are valued at purchase cost, while inventories of finished goods and work-in-progress are valued at production cost. On the write-off of the inventories, the valuation 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 corporate income 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
- 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
- Other depreciable assets: straight-line or reduced-balance depreciation

The depreciation method must be applied consistently. Land may not be depreciated.

Under the accelerated depreciation method, the assets are depreciated at a maximum rate of 50% 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 and set-up costs cannot be depreciated for tax purposes.

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

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.

Reserves from the revaluation of fixed assets, carried out after 1 January 2004, which are deducted as tax depreciation or expenses when assets are sold or written off are taxed simultaneously with the deduction of the tax depreciation or expenses (that is, when the assets are sold or written off).

**Relief for losses.** Annual tax losses incurred in 2009 or subsequent years may be carried forward for seven years (five years for losses incurred before 2009) and are not adjusted for inflation. Losses of entities that cease to exist as a result of a liquidation, spin-off 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. Under certain circumstances, a group of taxable persons established in Romania may be treated as a single taxable person for VAT reporting 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	24
Special rates for certain goods and services	5/9
Special consumption (excise) taxes; imposed, for example, on energy products, beverages, cigarettes and coffee; taxes are imposed at specified amounts per unit on certain products (for example, coffee and alcohol) and at percentage rates for other products	Various
Social security contributions; paid by employers on the total gross realized salaries	
Social Insurance Fund; rate varies according to work conditions	20.8 to 30.8
Health Fund	5.2
Unemployment Fund	0.5
National Insurance Fund for Labor Accidents and Professional Diseases	0.15 to 0.85
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
Medical leaves	0.85
Local taxes on land, buildings, cars, certain authorizations and other items	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.

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 specified transfer-pricing documentation.

**Debt-to-equity rules.** Interest expenses are fully deductible if the debt-to-equity ratio is positive and does not exceed 3:1. Only loans granted for a period of greater than one year are included in the debt-to-equity computation. If the 3:1 threshold is exceeded, interest expenses on such loans and net 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 expenses and net 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.
- 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 (gg)</b>	<b>Interest (hh)</b>	<b>Royalties (hh)</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	0/10	10
Ethiopia	10	15	15
Finland	5	0/5	2.5/5 (f)
France	10	10	10
Georgia	8	10	5
Germany	5/15 (b)	0/3 (g)	3
Greece	25/45 (h)	10	5/7 (i)
Hungary	5/15 (j)	15	10
Iceland	5/10 (a)	3	5
India	15/20 (a)	0/15	22.5
Indonesia	12.5/15 (a)	12.5	12.5/15 (k)
Iran	10	8	10
Ireland	3	0/3 (l)	0/3 (i)
Israel	15	0/5/10 (m)	10
Italy	10	10	10
Japan	10	10	10/15 (i)
Jordan	15	12.5	15
Kazakhstan	10	10	10
Korea (North)	10	10	10
Korea (South)	7/10 (a)	0/10 (x)	7/10 (k)
Kuwait	0/1 (ii)	1	20
Latvia	10	10	10
Lebanon	5	5	5
Lithuania	10	10	10
Luxembourg	5/15 (a)	0/10 (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
Norway	10	10	10
Pakistan	10	10	12.5

	Dividends (gg) %	Interest (hh) %	Royalties (hh) %
Philippines	10/15 (a)	10/15 (u)	10/15/25 (v)
Poland	5/15 (a)	10	10
Portugal	10/15 (w)	10	10
Qatar	3	3	5
Russian Federation	15	15	10
San Marino	0/5/10 (ee)	3	3
Singapore	0/5 (ff)	5	5
Slovak Republic	10	10	10/15 (k)
Slovenia	5	5	5
South Africa	15	15	15
Spain	10/15 (a)	10	10
Sri Lanka	12.5	10	10
Sudan	5/10 (a)	0/5	5
Sweden	10	10	10
Switzerland	10	10	0/10 (y)
Syria	5/15 (a)	10	12
Tajikistan (dd)	5/10 (a)	10	10
Thailand	15/20 (a)	10/20/25 (z)	15
Tunisia	12	10	12
Turkey	15	10	10
Turkmenistan	10	10	15
Ukraine	10/15 (a)	10	10/15 (k)
United Arab Emirates	0/3 (d)	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) The rate is 0% if the indebtedness on which the interest is paid is guaranteed, insured, or financed by the other state or by a financial institution that is a resident of the other state.
- (d) The 0% rate applies if the beneficial owner of the dividends is one of the following:
- The government of a contracting state
  - The governmental institution or entity of a contracting state
  - A company that is resident in a contracting state and that has at least 25% of its capital owned directly or indirectly by the government or governmental institutions of either contracting state
- (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 fur 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 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 are taxed only in the state where the interest arises and according to the law of that state, provided that they are deductible in the determination of profits of the interest payer:

- Interest derived from rights or debt claims carrying a right to participate in profits
  - Interest linked to the borrower's profits
  - 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)
  - Interest on loans with a term greater than two years
  - Interest on debt-claims guaranteed, insured or directly or indirectly financed by or on behalf of the government of either contracting state
- (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 5% 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) As long as Austria, under its national law, does not levy withholding tax on interest paid to Romanian residents, the withholding tax rate is 0%.
- (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 to Romanian residents on long-term loans.
- (q) The 0% rate applies to industrial royalties received from Malaysia by Romanian residents.
- (r) 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 with respect to motion picture films or works on film or videotape or other means of reproduction for use in connection with television broadcasting)
  - 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 with respect to a rental or franchise agreement)
- (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 to 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) The 10% rate applies if the beneficiary of dividends is a company owning at least 25% of the capital of the payer for an uninterrupted period of two years.
- (x) The 0% rate applies to interest related to sales on credit of industrial and scientific equipment.

- (y) Romania will not impose withholding tax on royalties paid to Swiss residents as long as Swiss domestic law does not impose withholding tax on royalties.
- (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 0% rate applies to industrial royalties.
- (bb) This treaty is currently applied only to Bosnia-Herzegovina.
- (cc) The 0% rate applies to the following types of interest:
- Interest related to public debt instruments or to instruments issued by the National Bank of Romania with the purposes of reaching monetary policy objectives
  - Interest paid to EU/EEFTA pension funds
- The 16% rate applies to other interest payments.
- (dd) The treaty is not yet effective.
- (ee) The 0% rate applies if the beneficiary of the dividends is a company owning at least 50% 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 10% rate applies to all other dividends.
- (ff) The 0% rate applies to dividends paid to the government of the other contracting state.
- (gg) In accordance with an EU directive, the following rules apply to dividends paid to companies residing in the EU or EFTA:
- The withholding tax rate in Romania is 0% if certain conditions are met, such as the beneficiary of the dividends owns at least 10% of the capital of the payer for an uninterrupted period of two years before the payment of the dividends.
  - The withholding tax rate in Romania is 16% if the conditions mentioned in the preceding bullet are not satisfied.
- (hh) The withholding tax rate is 0% for interest and royalties if both of the following conditions are satisfied:
- The beneficial owner of the interest or royalties is a legal person resident in an EU or EFTA member state or a permanent establishment of an entity resident in such a state.
  - The beneficial owner of the 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 date of payment of the interest or royalties.
- (ii) The 0% rate applies to dividends paid to the government or political subdivisions, local authorities or administrative territorial units. The 0% rate also applies to majority state-owned companies (at least 51%) if the minority shareholders are residents of that state.

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**A. At a glance**

Corporate Profits Tax Rate (%)	0/15.5/20 (a)(b)
Capital Gains Tax Rate (%)	0/15.5/20 (a)(c)
Branch Tax Rate (%)	15.5/20 (a)
Withholding Tax (%)	
Dividends	0/9/15 (d)
Interest on Certain Types of State and Municipal Securities	15 (e)
Other Interest	20 (e)
Royalties from Patents, Know-how, etc.	20 (e)
Income from the Operation, Maintenance or Rental of Vessels or Airplanes in International Traffic	10 (e)
Payments of Other Russian-Source Income to Foreign Companies	20 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 (f)

- (a) The basic corporate profits tax rate consists of a 2% rate payable to the central government and rates ranging from 13.5% to 18% payable to the regional governments. The regional governments set the rates applicable to their respective regions.
- (b) The 0% rate applies to profits of companies performing educational and medical activities. Also, see Section B.
- (c) The 0% rate applies to capital gains realized by Russian companies on the disposal of certain shares or participation interests acquired after 1 January 2011 and held for at least five years. Also, see Section B. The 0% rate also applies to capital gains realized by foreign companies that do not have a permanent establishment in the Russian Federation with respect to the disposal of the following shares:
- Shares in Russian companies in which the value of immovable property does not exceed 50% of the company's total assets

- Shares in Russian companies that are traded on an organized securities market.
- (d) The 9% rate applies to dividends received by Russian entities or by individuals who are residents of the Russian Federation. The 15% rate applies if the recipient of the dividends is a foreign legal entity. 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.
- (e) 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.
- (f) 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 2% rate payable to the central government and rates ranging from 13.5% to 18% 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 15.5% to 20%, depending on the rate set by the regional government. A 0% tax rate applies to profits of Russian companies performing educational activities and medical activities if they satisfy certain criteria. These criteria include the holding of a license for carrying out the corresponding activities and the receipt of not less than 90% of taxable income from educational, medical or research and development (R&D) activities. The 0% tax rate applies from 1 January 2011 to 1 January 2020.

**Capital gains.** Capital gains are included in taxable income and taxed at the regular rates, except for capital gains realized by Russian companies on the disposal of certain shares or participation interests in Russian companies acquired after 1 January 2011 and held for at least five years. The disposal of shares or participation interests is subject to a 0% rate if shares or participation interests satisfy either of the following conditions:

- They are not circulated on the organized securities market.
- They qualify as shares in a company in the high-technology (innovation) sector.

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 10 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
- 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 received by Russian entities or by 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 are taxable at a rate of 15%. 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.

Dividends received by Russian legal entities on strategic shareholdings are exempt from tax. Under this 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.

**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.

### **C. Determination of trading income**

**General.** Taxable profit is determined by computing the profit or loss from business activities and 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. Alternatively, at the taxpayer's option, the maximum deductible interest on ruble loans may be calculated using the official Central Bank of Russia refinancing rate increased by a factor of 1.1 (for 2010 to 2012, the factor is increased to 1.8) and

the maximum deductible interest on debts in foreign currency is calculated using a rate of 15% (the official Central Bank of Russia refinancing rate decreased by the factor of 0.8 in 2011 and 2012). In certain circumstances, the deductibility of interest on intercompany loans is restricted by thin-capitalization measures.

For details on tax depreciation, see *Tax depreciation*.

Certain costs related to research and development (R&D) are deductible in the amount of actual documented costs increased by a factor of 1.5.

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 services of a preparatory or auxiliary nature to third parties for no charge, 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. The straight-line method is required for assets with a designated useful life of over 20 years.

The reducing-balance method may be applied. Under this method, depreciation must be determined for each depreciation group as a whole. Depreciation must be calculated based on the total balance of each depreciation group. This balance equals the total book value brought forward for all depreciable assets included in the group to which the reducing-balance method applies.

The depreciation method can be changed once in a five-year period.

Enterprises may deduct 10% (30% with respect to fixed assets with a designated useful life of over 3 years and up to 20 years) of the initial book value of newly purchased fixed assets and capital investments in existing fixed assets as current-year expenses (capital investment allowance). If fixed assets are sold within five years after the date of the purchase, the deducted capital investment allowance is recaptured.

**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 following table 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; maximum rate	2.2
Tariffs	
Export, rate varies by type of good	Various
Import	Various
Social tax on salaries of employees; imposed on employers; tax is imposed on both Russian companies and branches of foreign entities; the effective tax rate varies depending on the amount of gross income received by the employee; maximum tax is RUR 157,420 (approximately US\$5,000) per employee	34
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

Most foreign-exchange restrictions were abolished in 2006. Russian enterprises' 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
Algeria	5/15 (tt)	0/15 (k)	15
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
Botswana	5/10 (ll)	10	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Brazil	10/15 (vv)	15	15
Bulgaria	15	15	15
Canada	10/15 (c)	10	0/10 (d)
China	10	10	10
Croatia	5/10 (e)	10	10
Cuba	5/15 (bbb)	10	5
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
Greece	5/10 (rr)	7	7
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
Italy	5/10 (ss)	10	0
Japan	15	10	10 (m)
Kazakhstan	10	10	10
Korea (North)	10	0	0
Korea (South)	5/10 (x)	0	5
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
Mexico	10	0/10 (uu)	10
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
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
Saudi Arabia	5	5	10
Serbia and Montenegro	5/15 (hh)	10	10
Singapore	5/10 (ww)	7.5	7.5
Slovak Republic	10	0	10
Slovenia	10	10	10
South Africa	10/15 (w)	10	0
Spain	5/10/15 (y)(z)	0/5 (z)(qq)	5 (z)

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Sri Lanka	10/15 (aa)	10	10
Sweden	5/15 (bb)	0	0
Switzerland	5/15 (cc)	0/5/10 (dd)	0
Syria	15	10	4.5/13.5/18 (kk)
Tajikistan	5/10 (ll)	0/10 (oo)	0
Thailand	15	10 (xx)	15
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
Venezuela	10/15 (yy)	5/10 (zz)	10/15 (aaa)
Vietnam	10/15 (gg)	10	15
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
  - 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 25% 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 the 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 a joint venture) of the payer and that 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 0% rate applies if the interest is paid with respect to the sale on credit of industrial, commercial or scientific equipment, or of merchandise by one enterprise to another enterprise. 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.
  - 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.
- (rr) The 5% rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
- (ss) The 5% rate applies to dividends paid to corporations that hold at least 10% of the capital of the payer and that have invested in the payer at least US\$100,000 or the equivalent amount in other currency. The 10% rate applies to other dividends.
- (tt) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer.
- (uu) The 0% rate applies if any of the following circumstances exist:
  - The beneficial owner is a contracting state, a political subdivision or the central bank of a contracting state.
  - The interest is paid by any of the entities mentioned in the preceding bullet.
  - The interest arises in the Russian Federation and is paid with respect to a loan for a period of not less than three years that is granted, guaranteed or insured, or a credit for such period that is granted, guaranteed or insured, by Banco de México, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C., or interest is derived by any other institution, as may be agreed from time to time between the competent authorities of the contracting states.

- The interest arises in Mexico and is paid with respect to a loan for a period of not less than three years that is granted, guaranteed or insured, or a credit for such period that is granted, guaranteed or insured, by The Bank for Foreign Trade (Vneshtorgbank) or The Bank for Foreign Economic Relations of the USSR (Vnesheconombank), or the interest is derived by any other institution, as may be agreed from time to time between the competent authorities of the contracting states.
- (vv) The 10% rate applies if the beneficial owner of the dividends holds directly at least 20% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (ww) The 5% rate applies if the beneficial owner of the dividends is the government of the contracting state or if the beneficial owner of the dividends holds directly at least 10% of the capital of the payer of the dividends and has invested in the payer at least US\$100,000. The 10% rate applies to other dividends.
- (xx) The 10% rate applies if interest is received by an institution that has a license to carry on banking operations (Russian Federation) or a financial institution including an insurance company (Thailand).
- (yy) The 10% 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.
- (zz) The 5% rate applies to interest on bank loans. The 10% rate applies to other interest.
- (aaa) The 10% rate applies to fees for technical assistance. The 15% rate applies to royalties.
- (bbb) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.

A tax treaty with Chile has been passed to the Russian State Duma (the lower house of parliament) for ratification.

The tax treaty with Laos passed all hearings in parliament, but the President rejected its ratification.

The Russian Federation has signed but not yet ratified tax treaties with Argentina, Estonia, Ethiopia, Georgia, Latvia, Malta, Mauritius and Oman.

The Russian Federation is negotiating tax treaties with Bahrain, Bangladesh, Madagascar, Nigeria, Taiwan 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.
- It is a Rwandan government company.

**Rates of corporate tax.** The corporate tax rate is 30%.

**Capital gains.** Rwanda introduced a separate tax on capital gains arising from the disposal of immovable commercial property in the last quarter of 2010. Gains derived from disposals of other business assets are aggregated with other income and are taxed at the normal corporate income tax rate. Gains from disposal of shares listed on the Rwanda Stock Exchange are exempt from tax.

**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 June, 30 September and 31 December. 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 three months after the end of the tax year (31 March 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.

**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 that are set forth in the tax law or are determined by the Minister of Finance from time to time. 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.

<b>Nature of tax</b>	<b>Rate</b>
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%
Trade licenses; varies by nature and location of business; maximum amount	Frw 240,000

## 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 related-party 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 double tax treaties with Belgium, Mauritius and South Africa.

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# Saudi Arabia

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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:

- A resident capital company (only on profits attributable to shares owned by non-Saudi or non-Gulf Cooperation Council [GCC] shareholders; see below)
- A resident non-Saudi or non-GCC natural person who carries on a business in Saudi Arabia
- A nonresident company that carries on business in Saudi Arabia through a permanent establishment
- A person engaged in the field of natural gas investment
- A person engaged in the production of oil and hydrocarbon materials
- A nonresident that derives income subject to tax from sources in Saudi Arabia (tax is assessed through withholding tax)

Partners in personal companies (that is, general partnerships, unincorporated joint ventures 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 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 previous 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 realized by nonresident shareholders on the disposal of shares in a Saudi Arabian company are subject to tax at a rate of 20%.

However, capital gains arising on the sale 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 a 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 Arabian 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 the 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.
- 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
- 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 million.

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 nonresident shareholders are subject to withholding tax at a rate of 5% (see *Withholding tax*).

**Foreign tax relief.** Relief is not provided for foreign taxes paid (unless covered by a double tax treaty).

### 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.

**Nondeductible 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
- 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.** A branch of a non-resident company cannot claim deductions for head office costs that are allocated to the branch on an estimated or allocation basis. 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 generally allowed as deductions if they can be substantiated by certain documents, such as technical services agreements, head office auditors’ certificates and invoices.

Under the 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. In some cases, the DZIT has contested deductions for agency fees paid to Saudi

agents with respect to contracts entered into with government bodies after 30 July 2001 on the basis that they are no longer a necessary cost of doing business in Saudi Arabia.

**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.

Asset	Rate (%)
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 imposed on the shareholders in Saudi Arabian companies that are Saudi or GCC nationals. In practice, *zakat* is calculated and paid by a Saudi Arabian resident capital company on behalf of its individual or corporate shareholders. *Zakat* is levied on the *zakat* base of a resident capital company at a rate of 2.5%. The *zakat* base is broadly calculated as capital employed (for example, share capital and retained earnings) that is not invested in fixed assets, long-term investments and deferred costs, as adjusted by net results of operations for the year that is attributable to Saudi or GCC shareholders. 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
- 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, government procurement regulations provide for the retention of 10% of the contract value until the completion of the statutory formalities including the submission of the certificate from the DZIT.

**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 company affiliated with 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 Austria, Belarus, China, France, Greece, India, Italy, Korea (South), Malaysia, the Netherlands, Pakistan, the Russian Federation, South Africa, Spain, Syria, Turkey and the United Kingdom. These tax treaties are in effect. Tax treaties with Japan and Singapore generally become effective on 1 January 2012.

It has signed double tax treaties with Bangladesh, Cuba, Germany, Poland, Switzerland, Tunisia and Uzbekistan. These tax treaties are expected to enter into force in the future.

Saudi Arabia has also 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.

The Ministry of Finance has announced its prescribed method for the availing of tax treaty benefits such as reduced withholding tax rates or exemptions with respect to payments to residents in a country with which Saudi Arabia has entered into a double tax treaty. Circular 3328/19 requires that tax is withheld on all payments to nonresidents at the rates required under domestic tax law (without recourse to the double tax treaty). To benefit from a reduced withholding tax rate or exemption, the Saudi Arabian resident taxpayer (that is, the withholder) must submit a request for refund of "overpaid" tax to the DZIT together with supporting materials (for example, the tax residency certificate of the non-resident). The date on which the revised procedures begin to apply is not clear.

The table below shows the maximum withholding rates for dividends, interest and royalties provided under Saudi Arabia's double tax treaties that were available at the date of writing. To benefit from the advantageous rates under the double tax treaties, additional conditions may be required (for example, the recipient is required to be the beneficial owner of the related gain). Readers should obtain detailed information regarding the treaties before engaging in transactions.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Austria	5	5 (a)	10
China	5	5	10
France	0/5 (b)	0/5 (b)	0/15 (b)
Greece	5	5	10
India	5	5	10
Italy	5	5	10
Japan	5	10	5/10 (c)
Korea (South)	5	5	5/10 (c)
Malaysia	5	5	8
Netherlands	5	5	7
Pakistan	5	5	10
Russian Federation	5	5	10
Singapore	5	5	8
South Africa	5	5	10
Spain	0/5 (d)	5	8
Syria	5	7.5	15
Turkey	5	5	10
United Kingdom	5	0	5/8 (c)
Nontreaty countries	5	5	15

- (a) A 0% rate generally applies to payments to Austrian government bodies.  
 (b) These rates do not apply if the income is effectively attached to activities carried on by the recipient in Saudi Arabia.  
 (c) The 5% rate applies to royalties paid for the use of industrial, commercial or scientific equipment. The higher rate applies to other royalties.  
 (d) The 0% rate applies if the Spanish company receiving the dividends owns at least 25% of the share interests in the Saudi Arabian company.

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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 and Nondeductible Expenses	10 (c)
Directors' Fees	16
Interest	6/8/16/20 (d)
Royalties from Patents, Know-how, etc.	20
Payments to Nonresidents for Certain Services and Activities	20 (e)

Branch Remittance Tax	10 (f)
Net Operating Losses (Years)	
Carryback	0
Carryforward	3

- (a) The minimum tax is XOF 500,000 (XOF 750,000 if annual turnover exceeds XOF 250 million a year and XOF 1 million if annual turnover exceeds XOF 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, and see Section C for a list of nondeductible expenses.
- (d) 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.
- (e) 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.
- (f) 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 XOF 500,000 (XOF 750,000 if annual turnover exceeds XOF 250 million a year and XOF 1 million if annual turnover exceeds XOF 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 XOF 500,000 (XOF 750,000 or XOF 1 million, if applicable). The balance must be paid by 15 June.

Late payments are subject to interest at a rate of 4% of the tax due.

**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.
- 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 Accounting Plan of the Organization for the Harmonisation 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 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
- 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 following table 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 XOF 756,000	1 to 5
Regular pension, paid on each employee's gross salary, up to XOF 3,072,000; paid by	
Employer	8.4
Employee	5.6
Additional pension, paid on an executive's gross salary, up to XOF 9,216,000; 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 Economic and Monetary Union (Union Economique et Monétaire Ouest Africaine, or UEMOA).

#### F. Treaty withholding tax rates

Senegal has signed a multilateral tax treaty with the other members of the UEMOA, which are Benin, Bissau Guinea, Burkina

Faso, Côte d’Ivoire, Mali, Niger, Senegal and Togo. The principal provisions of this tax treaty are effective from 1 January 2010. Senegal has entered into bilateral tax treaties with Belgium, Canada, France, Italy, Mauritania, Morocco, Norway, Qatar and Tunisia.

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

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Belgium	10	16	10
Benin	10	15	15
Bissau Guinea	10	15	15
Burkina Faso	10	15	15
Canada	10	16/20 (a)	15
Congo	10	16	0
Côte d’Ivoire	10	15	15
France	10	15	15
Gabon	10	16	0
Italy	10	15	15
Mali	10	15	15
Mauritania	10	16	0
Morocco	10	10	10
Niger	10	15	15
Norway	10	16	16
Qatar	0	0	0
Togo	10	15	15
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 (d) to Section A.

Senegal has signed tax treaties with China, Lebanon 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 (a)
Royalties from Patents, Know-how, etc.	20 (b)
Capital Gains and Leasing Fees	20 (c)
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

- (a) This tax applies to nonresident companies. Under the Personal Income Tax Law, dividends and interest paid to resident and nonresident individuals are taxed at a rate of 10%.
- (b) This tax applies to nonresident companies. Under the Personal Income Tax Law, royalties paid to resident and nonresident individuals are taxed at a rate of 20%.
- (c) This tax applies to nonresident companies. Under the Personal Income Tax Law, individuals are taxed at a rate of 20% on rent fees and at a rate of 10% on capital gains.

## 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, and assets previously used in the country) 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, fur and leather manufacturing
- Production of base metal and standard metal products
- Production of machines and appliances
- Office machines
- Electrical units
- Radio, television and communication equipment
- Medical instruments
- Motor and other vehicles
- Recycling activities
- Video and cinema production

A company qualifies for a 10-year tax exemption if it invests RSD 800 million (approximately €7,500,000) 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 an underdeveloped area of the country and if it invests RSD 8 million (approximately €75,000) 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.

Under the Personal Income Tax Law, companies may be exempted from paying salary tax and employer social security contributions for a period of two to three years for the following newly employed individuals:

- Registered unemployed individuals who are under age 30
- Disabled individuals
- 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 five years. In addition, capital gains realized in Serbia by nonresidents are subject to the tax on capital gains at a rate of 20%.

**Administration.** The tax year is the calendar year. Exceptionally, at the taxpayer's request, the tax period may be set within any 12 months, subject to the tax authorities' approval.

Companies must file annual tax returns within 70 days after the tax year end (usually 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 five 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, as well as a tax credit for tax on interest income or royalty income withheld and paid in other jurisdictions by their overseas subsidiaries. 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
- 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*) 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.
- 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 are deductible for tax purposes only in the period in which they are actually paid.

**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.

**Relief for losses.** Tax losses incurred in business operations may be carried forward for five 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 following table 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 million (approximately €37,000) 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 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	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	17.15
Employee	17.15
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 local currency 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 premiums and transfers based on life insurance contracts
- Purchase and sale of national securities denominated in foreign currency
- Payments into the guarantee fund of a member of a center for the registration, deposit and clearance of securities
- Donations for charitable, cultural and scientific purposes in accordance with the donation legislation
- Bank guarantees, provided that the guarantee is a condition for the execution of a transaction that may be paid in Serbia in foreign currency
- Allowances for business trips abroad
- Salary payments to employees employed at diplomatic and consular missions, United Nations organizations and international financial institutions in Serbia
- Certain other payments defined by applicable specific legislation such as legislation dealing with the stock exchange and trading in 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 payable to related entities are limited to the amount payable with respect to intercompany debt equal to four times the value of the taxpayer’s own capital.

## F. Treaty withholding tax rates

The following table 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
Austria	5/15	10	5/10
Azerbaijan	10	10	10
Belarus	5/15	8	10

	Dividends %	Interest %	Royalties %
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	10	10
Egypt	5/15	15	15
Estonia	5/10	10	5/10
Finland	5/15	0	10
France	5/15	0	0
Germany	15	0	10
Greece	5/15	10	10
Hungary	5/15	10	10
India	5/15	10	10
Ireland	5/10	10	5/10
Italy	10	10	10
Korea (North)	10	10	10
Kuwait	5/10	10	10
Latvia	5/10	10	5/10
Libya	5/10	10	10
Lithuania	5/10	10	10
Macedonia	5/15	10	10
Malaysia	10	10	10
Malta	5/10	10	5/10
Moldova	5/15	10	10
Montenegro*	10	10	5/10
Netherlands	5/15	0	10
Norway	15	0	10
Pakistan	10	10	10
Poland	5/15	10	10
Qatar	5/10	10	10
Romania	10	10	10
Russian Federation	5/15	10	10
Slovak Republic	5/15	10	10
Slovenia	5/10	10	5/10
Spain	5/15	10	5/10
Sri Lanka	12.5	10	10
Sweden	5/15	0	0
Switzerland	5/15	10	10
Turkey	5/15	10	10
Ukraine	5/10	0/10	10
United Kingdom	5/15	10	10
Nontreaty countries	20	20	20

\* At the time of writing, this treaty was expected to be ratified by the end of 2011 and enter into force on 1 January 2012.

## Seychelles

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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 (%)	
Dividends	15 (b)
Interest	0 to 33 (c)
Royalties from Patents, Know-how, etc.	15
Management Fees	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. See Section B.
- (c) A 15% rate applies to interest paid by nonfinancial institutions to residents and nonresidents other than banks, finance companies or other enterprises that are principally engaged in the business of lending money. The withholding tax is considered to be a final tax for nonresidents. The tax rate of 33% applies only to interest paid on bearer bonds.
- (d) Management and technical fees payable to nonresidents are taxable at a rate of 15%. Management fees paid by financial institutions to nonresidents are subject to withholding tax at a rate of 33%. The withholding tax is considered to be a final tax.

**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.** Corporations and trustees are subject to business tax at a rate of 25% on the first SR 1 million of taxable income and at a rate of 33% on the balance.

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.

**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.

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 Revenue Commissioner issues a provisional tax assessment, which sets out the required provisional payments.

**Dividends.** Withholding tax is not imposed on dividends paid to resident persons. Dividends paid to nonresidents are subject to withholding tax at a rate of 15%. Dividends received from non-resident 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.

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, 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.

Asset	Rate (%)
Plant and machinery	20
Office equipment	20
Vehicles	20
Computers	40

Capital expenditure of up to SR 10,000 on the assets described above is fully deductible in the year of expenditure.

**Relief for losses.** Business tax losses may be carried forward for five years for relief against future income of the same trade. 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
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	15
Local service providers listed in Schedule 3 of the regulations and tourism-related service providers listed in Schedule 4 of the regulations	12 to 15

Nature of tax	Rate (%)
Contributions to Seychelles Pension Fund, on monthly salaries and allowances paid to employees; paid by	
Employer	1
Employee	1
Trades Tax (customs duty), on imported goods	Various

## E. Miscellaneous matters

**Foreign-exchange controls.** The Seychelles currency is the Seychelles rupee (SR).

Seychelles does not impose exchange controls. However, under the Foreign Exchange Act, a person, other than an authorized dealer, may not as a business buy foreign currency from or sell foreign currency to any person other than an authorized dealer.

Payments to, receipts from and transfers to and from a person outside Seychelles with respect to international transactions must be made through authorized dealers.

**Debt-to-equity rules.** Seychelles does not impose any thin-capitalization rules.

**Transfer pricing.** Seychelles does not have transfer-pricing regulations. However, the Business Tax Act requires transactions between related parties to be conducted using internationally approved transfer-pricing guidelines.

## F. Treaty withholding tax rates

	Dividends %	Interest %	Royalties %
Barbados	5	5	5
Botswana	5/10 (a)	7.5	10
China	5	10	10
Cyprus	0	0	5
Indonesia	10	10	10
Malaysia	10	10	10
Mauritius	0	0	0
Oman	5	5	10
Qatar	0	0	5
South Africa	5/10	7.5	10
Thailand	10	10/15 (b)	15
United Arab Emirates	0	0	5
Vietnam	10	10	10
Zambia	5/10 (a)	5	10
Nontreaty countries	15	0 to 33	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.

Tax treaties between Bahrain, Belgium, Kuwait, Monaco and Zimbabwe have not yet been ratified.

# Singapore

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## Singapore

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**A. At a glance**

Corporate Income Tax Rate (%)	17 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	17 (a)
Withholding Tax (%) (b)	
Dividends	0 (b)(c)
Interest	15 (b)

Royalties from Patents, Know-how, etc.	10 (b)
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, and on 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) into Singapore by companies resident in Singapore are exempt from tax if prescribed conditions are met. For remittances of specified foreign income that does not meet the prescribed conditions, companies may be granted tax exemption under specific scenarios or circumstances on an approval basis.

**Rates of corporate income tax.** The standard corporate income tax rate is 17%. Seventy-five percent of the first S\$10,000 of normal chargeable income is exempt from tax, and 50% of the next S\$290,000 is exempt from tax. The balance of chargeable income is fully taxable at the standard rate of 17%.

**Tax incentives, exemptions and reductions.** The following tax incentives, exemptions and tax reductions are available in Singapore.

*Pioneer companies and pioneer service companies.* The incentive for pioneer companies and pioneer service companies is aimed at encouraging companies to undertake activities that have the effect of promoting economic or technological development in Singapore. 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 incentive 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, subject to 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.

*Approved royalties, technical assistance fees, and contributions to research and development costs.* Approved royalties, technical assistance fees, and contributions to research and development (R&D) costs paid to nonresidents may be exempted from withholding tax.

All the above incentives are also available under the Headquarters Programme (see *Headquarters Programme*).

*Tax exemption scheme for new companies.* Subject to certain conditions, a newly incorporated and tax-resident Singapore company or a Singapore company limited by guarantee may qualify for a full tax exemption on the first S\$100,000 of chargeable income and 50% tax exemption on the next S\$200,000 of chargeable income. The exemption applies only to the qualifying company's first three consecutive tax years.

*Payments for software, information and digitized goods.* Subject to certain conditions, exemption from withholding tax applies to the following payments to nonresidents during the period from 28 February 2003 to 27 February 2013:

- Payments for shrink-wrap software, site licenses, software downloaded from the Internet by end-users and software bundled with computer hardware
- Payments made by end-users for the purchase of information and digitized goods

*Payments for use of submarine cable capacity.* Payments for the use of capacity on (including the Indefeasible Right of Use, or IRU) an international telecommunication submarine cable operated by nonresidents are exempt from withholding tax during the period from 28 February 2003 to 27 February 2013, subject to certain conditions.

*Productivity and Innovation Credit.* Businesses that incur qualifying expenditure on the following six activities qualify for an enhanced deduction or allowance, known as a Productivity and Innovation Credit (PIC), from the 2011 tax year to the 2015 tax year:

- R&D
- Eligible design activities
- Acquisition of intellectual property rights
- Registration of patents, trademarks, designs and plant varieties
- Acquisition or leasing of PIC automation equipment
- External training and qualifying in-house training

All businesses can claim a deduction or allowance of 400% of the first S\$400,000 of their expenditures per tax year on each of the above activities from their taxable income, subject to the following caps:

- For the 2011 and 2012 tax years: a combined cap of S\$800,000 of eligible expenditure for each activity
- For the 2013 to the 2015 tax years: a combined cap of S\$1,200,000 of eligible expenditure for each activity

Qualifying persons with at least three local employees have the option to convert up to 30% of the first S\$100,000 of eligible expenditure into a nontaxable cash grant of up to S\$30,000 each year from the 2011 tax year to the 2013 tax year. For the 2011 and

2012 tax years, a combined cap of S\$200,000 applies. This cash component of the PIC scheme will be reviewed after three years.

*R&D incentives.* Liberalized R&D deductions are available from the 2009 tax year through the 2015 tax year. A tax deduction can be claimed for undertaking R&D in any area (that is, the R&D is no longer required to be related to the trade or business carried on by the company), and an additional 50% tax deduction is allowed for certain qualifying R&D expenditure. If the companies outsource their R&D activities to an R&D organization in Singapore, the tax deduction available is at least 130% of the amount of R&D expenses incurred. Businesses that incur qualifying R&D expenditure may qualify under the PIC scheme (see *Productivity and Innovation Credit* above).

The R&D tax allowance scheme allows taxpayers to earn an R&D tax allowance (RDA) equal to 50% of its chargeable income up to S\$300,000 in any tax year between the 2009 tax year and the 2013 tax year. The R&D tax allowance may be used in any tax year between the 2010 tax year and 2016 tax year, up to the amount of incremental R&D expenditure incurred in the basis period of the tax year of use, subject to conditions. However, as a result of the introduction of the PIC scheme (see *Productivity and Innovation Credit*), the RDA scheme is being phased out and no RDA is granted, effective from the 2011 tax year. Transitional rules exist for the use of any unused RDA balances until the 2016 year of assessment.

*Headquarters Programme.* The Headquarters Programme consists of an International Headquarters (IHQ) Award and a Regional Headquarters (RHQ) Award. The Headquarters Programme 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 qualifying income, depending on the amount of commitment to Singapore. This commitment is demonstrated by various factors, including headcount, business spending and quality of people hired.

*Finance and treasury center incentive.* The finance and treasury center (FTC) incentive is aimed at encouraging companies to use Singapore as a base for conducting treasury management activities for related companies in the region. Income derived from the provision of qualifying services to approved network companies and from the carrying on of qualifying activities on its own account 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.

A sunset clause of 31 March 2016 has been introduced for the FTC scheme.

*Financial sector incentive.* The financial sector incentive (FSI) is designed to encourage the development of high-growth and high value-added financial activities in Singapore. A 5% or 12%

concessionary tax rate applies to income derived from carrying on qualifying activities by approved FSI companies in Singapore.

*Shipping incentives.* All existing tax incentives for the maritime sector have been streamlined and consolidated under the new Maritime Sector Incentive (MSI), effective from 1 June 2011. Ship operators, maritime lessors and providers of certain supporting shipping services may enjoy tax incentives under the MSI, which consists of the following three broad categories:

- International shipping enterprise
- Maritime (ship or container) leasing
- Supporting shipping services

The tax benefits include tax exemptions or concessionary tax rates of 5% and 10%.

Shipping companies that either own or operate a fleet of vessels can apply for the MSI-Approved International Shipping Enterprise (MSI-AIS) award. Successful applicants are granted either MSI-AIS status or the MSI-AIS (Entry Player) [MSI-AIS (Entry)] status, depending on the company's scale of operations. Under this scheme, income derived from the operation of Singapore-flagged and non-Singapore flagged vessels plying in international waters and other qualifying income are exempt from tax. An MSI-AIS award may be granted for a renewable period of 10 years (extendible up to 30 years), while MSI-AIS (Entry) status may be granted for a nonrenewable period of 5 years, with the option of graduating to the MSI-AIS status if qualifying conditions are met. Applications for MSI-AIS (Entry) can be made from 1 June 2011 to 31 May 2016.

Under the MSI-Maritime Leasing (Ship) award, approved shipping investment enterprises (Singapore-incorporated ship leasing companies, shipping funds, business trusts or partnerships) may enjoy tax exemption on their qualifying income, which includes income from the chartering or finance leasing of seagoing ships to qualifying persons for use outside the port limits of Singapore. Approved shipping investment managers may also enjoy a 10% concessionary tax rate on income derived from the management of an approved shipping investment enterprise, and prescribed services and activities. Applications can be made from 1 June 2011 to 31 May 2016, and successful applicants are granted the status for a period of five years.

Under the MSI-Maritime Leasing (Container) award, approved container investment enterprises (Singapore-incorporated companies, business trusts or partnerships) may enjoy a concessionary tax rate of 5% or 10% on their qualifying income, which includes income from the operating or finance leasing of sea containers that are used for the international transportation of goods. Approved container investment managers may also enjoy a 10% concessionary tax rate on income derived from the management of an approved container investment enterprise and prescribed services and activities. Applications can be made from 1 June 2011 to 31 May 2016, and successful applicants are granted the status for a period of 5 years.

The MSI-Supporting Shipping Services (MSI-SSS) award aims to promote the growth of ancillary shipping service providers and

encourage shipping conglomerates to set up their corporate services functions in Singapore. An approved MSI-SSS company enjoys a 10% concessionary tax rate on incremental income derived from the provision of approved supporting shipping services, such as ship broking, forward freight agreement trading, ship management, ship agency, freight forwarding and logistics services. Applications can be made from 1 June 2011 to 31 May 2016, and successful applicants are granted the MSI-SSS award for a period of five years.

*Global Trader Programme.* The Global Trader Programme (GTP) is aimed at encouraging international companies to establish and manage regional or global trading activities with Singapore as their base. Under the GTP, approved companies enjoy a concessionary tax rate of 5% or 10% on qualifying transactions conducted in qualifying commodities and products (including energy, agricultural, building, industrial, electrical and consumer products, and carbon credits), qualifying transactions in derivative instruments and qualifying structured commodity financing activities. In addition, the 5% concessionary tax rate applies to income derived from qualifying transactions in liquefied natural gas, as specified by the relevant authority. A sunset clause of 31 March 2021 has been introduced for the GTP scheme.

*Approved cyber trader incentive.* The approved cyber trader incentive aims to develop Singapore into a regional electronic commerce hub. 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.* The venture capital funds incentive aims to encourage a thriving venture capital industry in Singapore. Gains derived from the disposal of approved investments, interest from approved 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.

**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 2011 basis year is assessed to tax in the 2012 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.

An estimate of the chargeable income (ECI) 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. No extension of time to file the return is allowed.

Income tax is due within one month after the date of issuance of the notice of assessment. In certain circumstances, companies may pay tax in monthly installments on the ECI, up to a maximum of 10, with the first installment payable one month after the end of the accounting period. No installments are allowed if the ECI is submitted more than three months after the end of the relevant 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%.

The tax law provides that it is an offense for a person chargeable to tax in Singapore not to file an income tax return with the tax authority. On conviction of such offense, a penalty of up to S\$1,000 is imposed for late filing of tax returns. In default of payment, the person may be liable to imprisonment for a term not exceeding six months. On conviction, a further penalty of S\$50 per day is imposed for each day that the tax return remains unfiled. If a person fails or neglects without reasonable excuse to file a tax return for a tax year for two years or more, a higher penalty of double the amount of tax assessed for the relevant tax year and a fine of not exceeding S\$1,000 is imposed on conviction. In default of payment, the person may be liable to imprisonment for a term not exceeding six months. The Singapore Revenue may compound any of these offenses.

**Dividends.** Under the one-tier system, dividends paid by a Singapore tax-resident 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.

**Foreign tax relief.** Singapore has entered into comprehensive double tax treaties with more than 60 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. The foreign tax credit (FTC) is granted on a country-by-country, source-by-source basis unless the resident taxpayer elects to claim FTC under the pooling method, which was introduced effective from the 2012 year of assessment, subject to meeting certain conditions.

A unilateral tax credit system, similar to treaty relief, is also available for 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 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.

For expenses to be deductible, they must meet all of the following conditions:

- They must be incurred wholly and exclusively in the production of income.
- They must be revenue in nature.
- They must not be specifically prohibited under the Singapore tax law.

Effective from the 2012 tax year, it is codified that businesses can claim revenue expenses incurred in the accounting year immediately preceding the accounting year in which they earn the first dollar of trade receipts. Before the 2012 tax year, 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 could be deducted for tax purposes. If the business could prove that it had started trading and incurred revenue expenses earlier than that date, it could also deduct such 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]*).

**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.

**Renovation or refurbishment deduction.** A tax deduction is allowable on due claim, for qualifying renovation or refurbishment (R&R) expenditure incurred during the period of 16 February 2008 through 15 February 2013, for the purposes of a trade, profession or business. The allowable R&R costs are capped at S\$150,000 for every three-year period, beginning with the basis period in which the deduction is first allowed.

**Inventories.** Trading 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 accepted.

**Provisions.** Impairment losses for debts computed in accordance with Singapore financial reporting standards may be deducted, but only to the extent that the debts arose from the trade carried on by the taxpayer.

### **Capital allowances (tax depreciation)**

*Plant and machinery.* Tax depreciation or capital allowances are given for capital expenditures incurred on the acquisition of plant and machinery used for the purposes of a trade or business. Qualifying plant and machinery are normally written off in equal amounts over three years when claimed. 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 tax year.

The cost of the following may be written off in the year of acquisition:

- Computers or other prescribed automation equipment
- Generators
- Robots
- Certain efficient pollution-control equipment
- Certified energy-efficient equipment or approved energy-saving equipment
- Certain industrial noise- and chemical hazards-control equipment

Businesses that incur qualifying expenditure on the acquisition of prescribed automation equipment may qualify under the PIC scheme (see Section B).

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 industrial buildings or structures 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.

The industrial building allowance (IBA) was phased out after 22 February 2010. Qualifying capital expenditure incurred by businesses on or before 22 February 2010 on the construction or purchase of industrial buildings or structures continues to qualify for IBA, subject to existing IBA rules. As a result of the phase-out, IBA is not allowed with respect to capital expenditure incurred after 22 February 2010 on the construction or purchase of industrial buildings or structures except in specified scenarios, subject to meeting the conditions imposed.

*Land intensification allowance incentive.* The new land intensification allowance (LIA) incentive grants an initial allowance of 25% and an annual allowance of 5% on qualifying capital expenditure incurred on or after 23 February 2010 by businesses on the construction or renovation of qualifying buildings or structures if certain conditions are met. The user of the building or structure must carry out one of the specified qualifying activities as its principal activity in the building or structure. The LIA incentive is available for five years, and approvals are granted from 1 July 2010 to 30 June 2015.

*Intellectual properties.* Writing-down allowances (WDAs) are granted for capital expenditure incurred on the acquisition of intellectual property (IP) from 1 November 2003 to 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 the economic owners of IP if a Singapore company has substantial economic rights over the IP, but a foreign parent holds the legal title.

On approval, an accelerated WDA over two years is granted to an approved media and digital entertainment (MDE) company with respect to the acquisition of approved IP rights for MDE content (pertaining to films, television programs, digital animations or games, or other MDE content) during the period of 22 January 2009 to 31 October 2013.

A 100% WDA is also available to a company that carries on a trade or business and that has incurred expenditures under an approved cost-sharing agreement entered into and approved on or after 17 February 2006, with respect to R&D activities for purposes of that trade or business.

Businesses that incur qualifying expenditure on the acquisition of IP rights may qualify under the PIC scheme (see Section B).

*Submarine cable systems.* Acquisitions of IRUs for international telecommunications submarine cable systems qualify for WDAs over the period of use.

*Disposal of plant and equipment and industrial buildings.* Allowances are generally subject to recapture on the sale of qualifying plant and equipment and industrial buildings 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 shareholding 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 shareholding test and to the requirement that the trade giving rise to the capital allowances continues to be carried on (same trade test).

A one-year carryback of up to an aggregate amount of S\$100,000 of current year unused capital allowances and trade losses (collectively referred to as “qualifying deductions”) may be allowed, subject to the meeting of certain conditions and compliance with specified administrative procedures.

The carryforward and carryback of losses and capital allowances are subject to the shareholders remaining substantially (50% or more) the same at the relevant comparison dates (shareholding 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 carryback of capital allowances is subject to the same trade test that is applicable to the carryforward of unused capital allowances.

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 (for example, if 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). If allowed, 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, capital allowances and donations may be transferred by one company to another within a group, subject to meeting certain qualifying conditions. 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 following table 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 or furtherance of business and on imports of goods into Singapore unless the imports qualify for import reliefs	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\$45,000 for ordinary wages; contributions paid by	
Employer (limited to S\$800 a month)	16
Employee (limited to S\$1,000 a month)	20
Contributions on additional wages, such as bonuses and nonregular payments (limited to S\$85,000 less the total ordinary wages subject to CPF contributions in the year); paid by	
Employer	16
Employee	20
(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 12%; 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. For employees older than age 35 who earn total wages of S\$1,500 or less per month, graduated rates of up to 16% for the employer and 20% for the employee apply.)	
Skills development levy; payable by employer for all employees; based on the first S\$45,000 of monthly gross remuneration; subject to a minimum of S\$2	0.25

## 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.** The tax legislation allows 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 nonresident, 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.** Specific legislation governs the arm's length principle to be applied to related-party transactions. The Singapore Revenue may make adjustments to profits for income tax purposes in cases in which the terms of commercial relations or financial relations between two related parties are not at arm's length. The Singapore Revenue has also issued circulars on certain transfer pricing (TP) matters, which are summarized below.

*TP Guidelines.* The TP Guidelines are designed 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 provides general methods for determining an arm's length price. The Singapore Revenue expects companies to assess their TP risk and prepare sufficient TP documentation to support their TP.

*TP consultation process.* The TP consultation process involves the Singapore Revenue inviting selected taxpayers to complete an extensive questionnaire. The objectives of the TP consultation are to assess the taxpayers' level of compliance with the TP Guidelines and to identify potential areas in which the Singapore Revenue can further facilitate and advise taxpayers on good practices in TP.

*Supplementary administrative procedures relating to Advanced Pricing Agreements.* The circular on supplementary administrative procedures relating to Advanced Pricing Agreements (APAs) outlines procedures relating to requests for APAs.

*TP guidelines for related-party loans and related-party services.* The Singapore Revenue has issued a circular setting out the guidelines for related-party loans and services.

## Reorganizations

*Amalgamations of companies.* For corporate amalgamations, a tax framework is available. This framework seeks to minimize the tax consequences arising from qualifying amalgamations and align it with the consequences provided in the Companies Act. On election, the tax treatment applies to two or more amalgamating com-

panies and an amalgamated company in a qualifying amalgamation. Under the framework, the amalgamated company is treated as continuing the existing businesses of the amalgamating companies (and, accordingly, an acquisition of new businesses by the amalgamated company is not deemed to occur) for tax purposes.

*Deduction for acquisitions of shares of companies.* A Singapore company may claim a deduction if it or its acquiring subsidiary incurs capital expenditure during the period 1 April 2010 to 31 March 2015 (both dates inclusive) in acquiring the ordinary shares in another company, subject to specified conditions. The amount of deduction granted is 5% of the capital expenditure, to be written off over 5 years. For this purpose, the capital expenditure is capped at S\$100 million for all qualifying acquisitions that have acquisition dates within one basis period.

## **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, other than individuals or permanent establishments in Singapore, 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 or do not use the funds from the operation of a permanent establishment in Singapore to make the deposit. In addition, interest paid on qualifying debt securities issued before 31 December 2013 to nonresidents who do not have a permanent establishment in Singapore is exempt from tax. This 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. Payments for arrangements, management or services relating to loans or indebtedness performed by nonresidents outside Singapore or guarantees with respect to loans or indebtedness provided by nonresident guarantors are not subject to withholding tax.

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
- 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.

For payments made to nonresident public entertainers, the withholding tax rate is reduced from 15% to 10% for payments from 22 February 2010 to 31 March 2015 (both dates inclusive).

In general, a 17% 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. If services are performed outside Singapore, such services are not subject to withholding tax. For management fees paid to a non-resident related party before 29 December 2009, the withholding tax exemption applies only if the fees represent a pure cost reimbursement without any mark-up for services performed outside Singapore.

Tax treaties may override the above withholding tax rules. However, if the rate under the domestic tax law is lower than the treaty rate (see below), the domestic tax rate applies.

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 (i)</b>
	%	%
Albania (w)	5 (a)	5
Australia	10	10
Austria	5 (a)	5
Bahrain	5 (a)	5
Bangladesh	10	10
Belgium	5 (a)	3/5 (p)
Brunei Darussalam	5/10 (a)(m)	10
Bulgaria	5 (a)	5
Canada	15 (a)	15
China	7/10 (a)(b)	6/10 (p)
Cyprus	7/10 (a)(b)	10
Czech Republic	0	10
Denmark	10 (a)	10
Egypt	15 (a)	15
Estonia	10 (a)	7.5
Fiji	10 (a)	10
Finland	5 (a)	5
France	10 (a)	0
Georgia	0	0
Germany	8 (a)	8
Hungary	5 (a)	5
India	10/15 (a)(c)	10
Indonesia	10 (a)	15
Ireland	5 (a)	5
Israel	7 (a)	5 (q)
Italy	12.5 (a)	15/20 (t)
Japan	10 (a)	10
Kazakhstan	10 (a)	10
Korea (South)	10 (a)	15
Kuwait	7 (a)	10
Latvia	10 (a)	7.5
Libya	5 (a)	5
Lithuania	10 (a)	7.5
Luxembourg	10 (a)	10
Malaysia	10 (a)	8
Malta	10 (a)(b)	10
Mauritius	0 (x)	0 (u)

	Interest %	Royalties (i) %
Mexico	5/15 (a)(d)	10
Mongolia	5/10 (a)(m)	5
Myanmar	8/10 (a)(e)	10/15 (j)
Netherlands	10 (a)	0
New Zealand	10 (a)	5
Norway	7 (a)	7
Oman	7 (a)	8
Pakistan	12.5 (a)	10
Panama (x)	5 (a)	5
Papua New Guinea	10 (a)	10 (a)
Philippines	10/15 (a)(r)	15/25 (k)(s)
Poland	10 (a)	10
Portugal	10 (a)	10
Qatar	5 (a)	10
Romania	5 (a)	5
Russian Federation	7.5 (a)	7.5
Saudi Arabia (y)	5 (a)	8
Slovak Republic	0	10
Slovenia	5 (a)	5
South Africa	0	5
Sri Lanka	10 (a)	15
Sweden	10/15 (a)(f)	0
Switzerland	10 (g)	5 (g)
Taiwan	— (n)	15
Thailand	10/25 (a)(v)	15
Turkey	7.5/10 (a)(h)	10
Ukraine	10 (a)	7.5
United Arab Emirates	7 (a)	5 (l)
United Kingdom	10 (a)	10
Uzbekistan	5	8
Vietnam	10 (a)	5/15 (o)
Nontreaty countries	15	10

- (a) Exempt under certain specified circumstances.
- (b) The rate is 7% for interest paid to banks or financial institutions.
- (c) The 10% rate applies to interest paid to financial institutions. The 15% rate applies to other interest.
- (d) The rate is 5% for interest paid to banks.
- (e) The rate is 8% for interest paid to banks or financial institutions.
- (f) The rate is 10% for interest paid by industrial undertakings to financial institutions in Sweden.
- (g) No withholding tax applies to interest or royalties with respect to certain approved transactions.
- (h) The rate is 7.5% for interest paid to financial institutions.
- (i) 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.
- (j) The 10% rate applies to payments relating to patents, designs or models, plans, secret formulas or processes, or industrial, commercial or scientific equipment or experience. The 15% rate applies in all other cases.
- (k) Royalties approved under the Economic Expansion Incentives (Relief from Income Tax) Act are exempt.
- (l) 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.
- (m) The 5% rate applies if the interest is received by a bank or similar financial institution.
- (n) The treaty between Singapore and Taiwan does not contain an interest article.

- (o) The 5% rate applies to payments relating to patents, designs or models, plans, secret formulas or processes, or industrial, commercial or scientific equipment or experience.
- (p) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (q) The tax rate on royalties in the recipient's country is limited to 20%.
- (r) The 10% rate applies to interest arising in the Philippines with respect to the public issuance of bonds, debentures or similar obligations.
- (s) In the case of the Philippines, the 15% rate applies to royalties paid by enterprises registered with the Philippine Board of Investments (BOI) and engaged in preferred activities. It also applies to royalties paid with respect to cinematographic films or tapes for television or broadcasting. The 25% rate applies in all other cases, except for those covered by footnote (k).
- (t) The 15% rate applies to payments relating to copyrights of scientific works, patents, trademarks, designs or models, plans, secret formulas or processes, industrial, commercial or scientific equipment or experience or information concerning industrial or scientific experience. The 20% rate applies to copyrights of literary or artistic works, including cinematographic films or tapes for television or broadcasting.
- (u) The 0% withholding tax rate does not apply to persons incorporated under the International Companies Act if their income or profits are not taxed at the normal rate of corporate income tax in Mauritius or any income tax comparable thereto.
- (v) The 10% rate applies to interest paid to financial institutions. The 25% rate applies to other interest.
- (w) The treaty entered into force on 19 July 2011 and is effective from 1 January 2012.
- (x) The treaty entered into force on 19 December 2011 and is effective from 1 January 2012.
- (y) The treaty entered into force on 1 July 2011 and is effective from 1 January 2012.

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## Sint Maarten

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*On 10 October 2010, the country Netherlands Antilles, which consisted of five island territories in the Caribbean Sea (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten), was dissolved. On dissolution of the Netherlands Antilles, the islands of Bonaire, Sint Eustatius and Saba (BES-Islands) became part of the Netherlands as extraordinary overseas*

municipalities. Curaçao and Sint Maarten have both become autonomous countries within the Kingdom of the Netherlands. The former Netherlands Antilles tax laws remain applicable to Sint Maarten, with the understanding that references in the laws to "the Netherlands Antilles" should now be read "Sint Maarten." The following chapter provides information on taxation in Sint Maarten only. Chapters on the BES-Islands and Curaçao appear on pages 143 and 271, respectively.

## A. At a glance

Corporate Income Tax Rate (%)	34.5
Capital Gains Tax Rate (%)	34.5
Branch Tax Rate (%)	34.5
Withholding Tax (%)	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10 *

\* Losses incurred by certain companies during their first four years of business may be carried forward indefinitely. Companies under the Sint Maarten offshore tax regime can carry forward tax losses five years.

## 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 former Netherlands Antilles or current Sint Maarten law, even if their management is located abroad, as well as companies incorporated under foreign law, but effectively managed and controlled in Sint Maarten. 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 Sint Maarten income items, such as profits earned through a permanent establishment and income related to real estate property in Sint Maarten, including interest derived from a mortgage on such real estate property.

**Tax rates.** Resident and nonresident companies, including branches of foreign companies, are taxed at a standard rate of 34.5%. However, this rate does not apply to companies qualifying for tax holidays, offshore companies or tax-exempt companies. The offshore tax regime (tax rates of 2.4% to 3%) has been abolished, subject to extensive grandfathering rules.

Withholding taxes are not imposed on remittances of profits by branches or subsidiaries to their foreign head offices.

**Tax incentives.** Reduced tax rates and other tax incentives (tax holidays) are granted to new business enterprises engaged in certain activities, including tourism and land development.

*Offshore companies.* The offshore tax regime was abolished in 2001. However, under grandfathering rules, special incentives are available for qualifying offshore companies in existence before 1 January 2002. Offshore companies are resident companies 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, royalty, financing, holding, portfolio investment, mutual fund, real estate and service activities) is taxed at corporate income tax rates of 2.4% to 3%. For offshore trading and service companies, the income is taxed

at rates of 24% to 30%. Capital gains on securities, loans, intellectual property and immovable property are exempt from corporate income tax. In addition, advance tax rulings can be obtained for determining the offshore tax status and method of calculating the taxable basis of offshore companies. Profits derived from real estate located outside Sint Maarten are exempt from corporate income tax. The offshore tax rates are guaranteed through 2019.

*Tax-exempt companies.* Tax-exempt companies (TECs) are exempt from Sint Maarten corporate income tax. Only private limited liability companies incorporated under former Netherlands Antilles or current Sint Maarten law may qualify as TECs. TECs may engage only in investing in debt instruments, securities, deposits and licensing of intellectual property and industrial rights. 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 or for benefits under any other double tax treaty of the former Netherlands Antilles or Sint Maarten. However, exchange-of-information provisions apply to TECs. If a TEC loses its tax-exempt status, it is treated as a regularly taxed company subject to tax on its worldwide income, and it will receive a tax-free step-up in basis.

*Ruling policy.* Sint Maarten has an extensive advance tax ruling practice. 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
- Informal capital (or cost-plus) rulings for intercompany trading activities

These rulings are usually valid for a five-year period, with the option for extension every five years.

*Other incentives.* Sint Maarten also offers other incentives for specific activities, such as the international use of aircraft and ships and the insurance of risks outside Sint Maarten.

**Capital gains.** Under the current corporate income tax rules, in general, except for offshore companies, no distinction is made between the taxation of capital gains and the taxation of other income. All income is taxed at the applicable corporate tax rate (34.5%). Taxation of capital gains on qualifying share interests (participation exemption) is discussed in Section C.

**Administration.** The standard tax year is the calendar year. However, on request and under certain conditions, a company may use a different 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 a 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 of the provisional tax return. An extension of time to file the return and pay the tax is not 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 final 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 the time of the filing of the final return. An extension for filing the final tax return on a later date can be obtained.

To ensure compliance with the rules described above, 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 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%.

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 for offshore companies.

**Dividends.** Sint Maarten does not levy dividend withholding tax on dividend distributions.

**Foreign tax relief.** A 100% exemption from Sint Maarten corporate income tax is available for foreign business profits. For this purpose, foreign profits are profits earned in another country through a permanent establishment or a permanent representative in the other country, or profits earned from immovable property located in a foreign country, including the rights related to the property that is part of the business activities of the taxpayer but is deemed to be part of the foreign business. If the foreign profits are derived from a business that can be considered a low-taxed portfolio investment, a reduced exemption of 63% applies.

### C. Determination of taxable income

**General.** Taxable profit must be calculated in accordance with “sound business practices.” It is not necessarily based on the annual commercial financial statements.

All expenses incurred with respect to conducting 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 considered to be a nondeductible profit distribution (dividend). 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, courses and seminars, is deductible.

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. Under thin-capitalization rules, the deductibility of interest accrued or paid directly or indirectly to affiliated TECs may be restricted.

**Participation exemption.** In principle, a 100% participation exemption applies for all qualifying share interests held by Sint Maarten corporate taxpayers.

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 US\$500,000.

For dividend income, additional requirements are imposed for a participation to be considered a qualifying participation. To apply the 100% exemption on dividends, either of the following conditions must be met:

- The qualifying participation is subject to a (nominal) profit tax rate of 10% (subject-to-tax clause).
- Dividends, interest or royalties received from other sources than the enterprise of the participation do not account for 50% or more of the gross income of the participation (nonportfolio-investment clause).

The above conditions may be met on a consolidated basis. If neither of the above conditions is met, a lower participation exemption of 70% applies to dividends. The subject-to-tax clause and the nonportfolio-investment clause do not apply to the 100% participation exemption on capital gains and income received from participations that exclusively or almost exclusively hold immovable property.

Expenses that are connected with the participation, including financing expenses, are not deductible if the income is 100% tax-exempt.

**Tax depreciation.** In general, assets are depreciated using the straight-line method, with the residual value taken into consideration. The following are some of the applicable rates.

Asset	Rate (%)	Residual value (%)
Buildings	2 to 2.5	10
Office equipment	10 to 50	Nil
Motor vehicles	10 to 33	15
Plant and machinery	10	10

The rates listed above provide a general overview of the depreciation rates. The actual depreciation rate depends on the type of asset used by the company.

Fixed company assets acquired by companies operating in Sint Maarten may qualify for accelerated depreciation at a one-time maximum annual rate of 33⅓% of the acquisition costs of the assets.

An investment allowance deduction of 8% (12% for new buildings or restorations of buildings) is granted for acquisitions of fixed assets by companies operating in Sint Maarten. The allowance is deducted from taxable income in the year of the investment and in the following year. The investment allowance deduction is recaptured in the year of sale and the subsequent year if the asset is sold within 6 years (15 years for buildings) of the date of the investment.

**Groups of companies.** On written request, Sint Maarten resident companies may form a fiscal unity (tax-consolidated group) for corporate income tax purposes. To qualify for a fiscal unity, the parent company must own at least 99% of the shares in the subsidiary. A fiscal unity may include, among others, a Dutch company

that has its place of effective management in Sint Maarten. The whole group is taxed for corporate income tax purposes as if it were one company and, as a result, the subsidiaries in the fiscal unity are no longer individually subject to corporate income tax.

Advantages for corporate income tax purposes of fiscal unity treatment include the following:

- Losses of one subsidiary may be offset against profits of other members of the fiscal unity.
- Reorganizations, including movements of assets with hidden reserves from one company to another, have no direct tax consequences for corporate income tax purposes.
- Intercompany profits may be fully deferred.

The fiscal unity does not apply for sales tax purposes.

**Relief for losses.** Losses in a tax year may be carried forward for 10 years. No carryback is available. 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.

Nature of tax	Rate (%)
Turnover tax; levied on turnover generated from goods sold and services rendered in Sint Maarten	
Standard rate	5
Real estate transfer tax	4

#### E. Miscellaneous matters

**Foreign-exchange controls.** The currency in Sint Maarten is the Antillean guilder (ANG).

For foreign investors that obtain a foreign-exchange license from the Sint Maarten Central Bank, no restrictions are imposed on the movement of funds into and out of Curaçao and Sint Maarten. In general, the Sint Maarten Central Bank automatically grants foreign-exchange licenses for remittances abroad. Residents are subject to several foreign-exchange regulations imposed by the Sint Maarten Central Bank. However, residents may be granted nonresident status for foreign-exchange control purposes. Some reporting requirements exist for statistical purposes.

**Transfer pricing.** In general, 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 (consisting of Aruba, Curaçao, the Netherlands, and Sint Maarten). Under a measure in the Tax Regulation for the Kingdom of the Netherlands, dividend distributions by a qualifying Dutch subsidiary to its Sint Maarten parent company are effectively subject to an 8.3% Dutch dividend withholding tax. Negotiations are underway to reintroduce a 5% Dutch dividend withholding tax on distributions by such Dutch subsidiaries to qualifying Sint Maarten companies. Sint Maarten does not impose

withholding tax on payments from Sint Maarten to residents of other countries.

The Netherlands Antilles entered into tax information exchange agreements with Antigua, Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Italy, Mexico, New Zealand, Saint Lucia, Spain, Sweden and the United States. As a result of the constitutional reform of the Kingdom of the Netherlands, the tax treaties entered into by the Netherlands Antilles became automatically applicable to the surviving countries, which are the legal successors of the Netherlands Antilles. Negotiations are ongoing with the United Kingdom.

Under the latest published Organization for Economic Cooperation and Development (OECD) list, Sint Maarten qualifies as a white-listed jurisdiction.

The government of the former Netherlands Antilles entered into bilateral agreements with the European Union (EU) member states with respect to the application of the EU Council Directive on taxation of savings income. The Sint Maarten (former Netherlands Antilles) law to implement the directive took effect in July 2006.

The Kingdom of the Netherlands has entered into many bilateral investment treaties that also apply to Sint Maarten.

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*The chapter below is based on the existing law in the Slovak Republic as of 3 October 2011. Because further changes to the 2012 tax rules are possible, including changes to the tax depreciation of fixed assets and social and health contributions, 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 (%) (a)	
Dividends	0
Interest	19 (b)
Royalties	19 (b)(c)
Income from Media	19 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	7 (e)

- (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.  
 (e) The carryforward period is five years for losses incurred before 2010.

## 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%.

**Incentives.** To promote investments, the Slovak government provides potential local and foreign investors with investment incentives that are proportionate to their activities in the Slovak Republic. The maximum limits for state aid are determined by the European Union (EU) regulations and are driven by the relative development of the country or region in which an investment project is located and the unemployment rate in that region. The limits are set as a percentage of eligible costs of an investment project.

The Slovak Republic provides the following indirect forms of incentives:

- Tax relief
- Transfer of immovable assets owned by the state or municipality at a price lower than the market price

The Slovak Republic provides the following direct forms of incentives:

- Cash grants on acquisitions of fixed assets
- Cash grants on newly created jobs
- Cash grants on training

*Tax relief.* Under the Investment Aid Act, companies may apply for a 100% tax reduction (full tax relief) for 10 consecutive tax years. The tax relief can be provided for newly established companies (new production) and also for existing companies (extension of existing production).

*Transfers of immovable assets owned by the state or municipality at a price lower than the market price.* In exceptional circumstances, as part of regional aid, the government may award a financial grant or discount from the market price with respect to a transfer of immovable assets (usually land and buildings) to investors by the state or municipalities.

*Cash grants for the acquisition of fixed assets.* Cash grants can be made for the acquisition of tangible fixed assets (for example, land, buildings, and plant and machinery) and intangible fixed assets (for example, patents, licenses, know-how or unpatented technical knowledge).

*Cash grants for newly created jobs.* Cash grants for newly created jobs are made based on the anticipated wage costs related to newly created jobs and the regional location of the project (taking into account the regional unemployment rate).

*Cash grants on training.* The amounts of cash grants for training are expressed as a percentage of eligible training costs and vary according to region (grants for the Bratislava region are lower than grants for the rest of the country) and type of training (general or specific).

*General conditions.* To qualify for investment aid, applicants must meet the general and specific conditions under the Slovak Investment Aid Act and the European legislation. The following are the general conditions:

- An applicant must submit its investment intention (plan) before the start of the projected works.
- An applicant must prove its ability to cofinance the project costs (at least 25%) through its own resources or external financing (free of any investment aid or subsidy).
- The project must be completed within three years.
- The project must comply with all conditions attached to the approval of the investment aid within three years after the issuance of the approval.
- All subsidized job positions must be filled within three years after the completion of the projects and maintained for a period of five years.
- The project operation must be maintained for a minimum period of five years from its completion without change of its location.

*Specific conditions.* The specific conditions vary according to the type of project.

The following are the specific conditions for manufacturing projects:

- Fixed assets with a total value of at least €14 million (lower thresholds apply in regions with high unemployment) must be acquired, and at least 50% of the value of the assets must be covered by the applicant's own resources.
- New machinery for production purposes must be acquired, and the machinery costs must represent at least 60% of the overall costs of the acquired assets. The machinery must be bought on arm's-length conditions, must not have been depreciated before the acquisition and must not be older than three years.
- At least 80% of revenues will be generated by the business activities stated in the investment aid intent.

The following are the specific conditions for technology centers:

- Fixed assets with a total value of at least €500,000 must be acquired, and at least 50% of the value of the assets must be covered by the applicant's own resources.
- At least 60% of the total number of employees must have a university degree.

The following are the specific conditions for shared-service centers:

- Fixed assets with a total value of at least €400,000 must be acquired, and at least 50% of the assets must be covered by the applicant's own resources.
- At least 30% of the total number of employees must have a university degree.

*Approval of the aid.* No legal entitlement to any investment aid exists. An applicant must submit an investment aid intent to the

relevant authorities (that is, the Ministry of the Economy and other relevant aid providers), which review compliance with both the general and specific conditions under the Investment Aid Act. If the conditions are met, the Ministry of the Economy issues an official offer to the applicant and, as of the date of issuance of the offer, the applicant may officially begin the project. Following receipt of the official offer, the investor must submit an investment aid application. The investment aid application is submitted to the Slovak government for approval. If the project capital expenditures exceed €50 million, approval of the European Commission is also required.

*Other national and local incentives.* The Slovak Republic is entitled to draw support from the Structural Funds and Cohesion Fund during the period of 2007 through 2013. It has €11,361,000 available. Most of the funds will be drawn by public institutions (for example, municipalities, cities, nonprofit-making companies), while only a minor part will be available for businesses. The incentives available for companies are mainly focused on tourism, enhancing research and development (R&D) and employee training.

Investors may benefit from infrastructure (for example, electricity, water, gas and sewage) fully or partially financed by the state and/or municipality. The municipality may also offer minor tax exemptions (real estate tax and other local taxes). In general, most of this support qualifies as regional state aid.

Municipalities are entitled to use state budget funding for the development of industrial parks. At the predevelopment stage, investors are typically requested to sign a letter of intent with the relevant municipality. Benefiting from advantages offered by industrial parks does not, in general, qualify as state aid.

**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 tax year. The filing period may be extended by a maximum of three months based on a written announcement filed with the tax authority before the expiration of the regular filing deadline. 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. Special rules apply to dividends distributed out of profits realized before 2004.

**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 relief 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, among others, tax depreciation (see *Tax depreciation*) 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 accruals and provisions (see *Provisions*)
- 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 a person or persons unknown and this is confirmed by the police.

**Provisions.** Accruals and provisions are generally not deductible, with certain exceptions specified by law (for example, accruals 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. Intangible assets are depreciated over their actual useful life.

It is possible to split assets and depreciate separable parts of the assets. Each separable part must have an acquisition price higher than €1,700, and separate evidence must be maintained. Only parts of assets specified by the Corporate Income Tax Act can be depreciated based on separate parts (for example, specific buildings and machinery).

Tax depreciation may be calculated by using either the straight-line method or the accelerated method. A company chooses the method on an asset-by-asset basis and, after the method is chosen, it cannot be changed during the depreciation period.

**Relief for losses.** Companies may carry forward losses and offset them against income in the seven 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 (carryforward of losses for five years) applies to losses incurred before 2010.

**Groups of companies.** Slovak law does not contain any provisions regarding the corporate 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 €1,116.75 to €2,978 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. Miscellaneous matters

**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.

Taxpayers must provide transfer-pricing documentation within 60 days after an official request by the tax authorities. The Slovak Ministry of Finance issued guidance regarding the transfer-pricing documentation requirements in 2009.

**Tax regime for business combinations.** Effective from 2010, the Slovak Corporate Income Tax Act addresses in more detail the taxation of the sale of all or part of an enterprise, the taxation of nonmonetary contributions to registered capital and the taxation of mergers and divisions of companies.

## 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 following table.

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 be in a position to provide a tax residency certificate.

Dividends are exempt from tax. Consequently, the treaty rates do not apply to dividends paid by Slovak companies.

	Dividends %	Interest %	Royalties %
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)
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)
Kazakhstan	10/15 (cc)	0/10 (c)	10
Korea (South)	5/10 (d)	0/10 (y)	0/10 (l)
Latvia	10	0/10 (c)	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Libya	— (x)	10	5
Lithuania	10	0/10 (c)	10
Luxembourg	5/15 (d)	0	0/10 (l)
Macedonia	5	10	10
Malta	5 (u)	0	5
Mexico	0	0/10 (c)	10
Moldova	5/15 (d)	10	10
Mongolia (z)	0	0	0
Montenegro	5/15 (d)	10	10
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
Serbia	5/15 (d)	10	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 (ff)	5/15 (d)	0/10 (j)	0/10 (l)
Syria	5	10	12
Taiwan (gg)	10	0/10 (hh)	5/10 (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
Vietnam	5/10 (dd)	10	5/10/15 (ee)
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% rate 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% rate 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
  - 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% rate 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.
- (cc) The lower rate applies if the recipient is a company that holds directly at least 30% of the capital of the payer of the dividends.
- (dd) The 5% rate applies if the recipient is a company that holds directly at least 70% of the capital of the payer of the dividends.
- (ee) The 5% rate applies to royalties paid for patents. The 10% rate applies to royalties paid for trademarks. The 15% rate applies in all other cases.
- (ff) A protocol to the treaty between Switzerland and the Slovak Republic was ratified by the Slovak Republic and sent to the Swiss parliament for approval. Under certain conditions, it may enter into force on 1 January 2012. The protocol contains changes in definitions and rates with respect to dividends, interest and royalties.
- (gg) The treaty enters into force on 1 January 2012.
- (hh) The 0% rate applies to the following types of interest:
- Interest paid to the other contracting state, public subdivisions or local authorities with respect to loans, debt-claims or credits
  - Interest paid on loans made, guaranteed or insured by public entities that are intended to promote exports

# Slovenia

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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	15 (a)
Interest	15 (a)
Royalties from Patents, Know-how, etc.	15 (a)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (b)

(a) This tax applies to payments to residents and nonresidents.

(b) 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*). 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 2010.

**Rates of corporate income tax.** For 2012, the standard corporate income tax rate is 20%.

The corporate income tax rate for qualified venture capital companies is 0%, subject to specific conditions.

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%.

Pension funds established in accordance with the Pension and Disability Insurance Act are taxed at a rate of 0%.

Insurance undertakings that are authorized to implement the pension scheme in accordance with the act regulating pension and disability insurance must pay tax with respect to the activities relating to such implementation at a rate of 0% of the tax base if a separate tax calculation is compiled only for this pension scheme.

**Capital gains.** Fifty percent of a capital gain is exempt from tax if certain conditions are met. The other 50% is treated as ordinary business income and is subject to tax at the regular corporate rate. However, in such circumstances, the expenses of a taxpayer are decreased by 5% of the exempt amount of capital gains. The same principle applies to capital losses (only 50% of a capital loss is deductible for tax purposes).

If a capital gain is realized from disposal of shares acquired with respect to venture capital investments in a venture capital company that is established in accordance with the act regulating venture capital companies, the total amount of such gain may be exempt from tax if the company had the status of a venture capital company for the entire tax period and if the company had the status of venture capital company for the entire period of the holding of the shares by the taxpayer. Losses incurred on the transfer of shares acquired under a venture capital scheme are not 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 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 period to which the advance tax payment relates. 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 may 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 10% 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.
- 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.

If, at the time of payment of a dividend, the duration of ownership of the recipient is shorter than two years and all other requirements are met, a withholding tax exemption is still possible if the payer or its agent provides an appropriate bank guarantee to the tax authorities.

Dividends paid to EU/European Economic Area (EEA) residents are exempt from withholding tax if a tax credit is not available in the country of residence of the recipient.

Dividends and interest paid to EU/EEA resident pension funds, investment funds and insurance companies performing pension plans are exempt from withholding tax if a tax credit is not available in the country of residence of the recipient and if the recipient of such income is not a Slovenian branch of such persons.

Dividends received by Slovenian taxable persons are generally subject to a full participation exemption.

**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
- 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. It is possible for a taxable person to prove that a contractual interest rate exceeding the acknowledged interest rate is an arm's length rate. The measure described in the preceding sentence applies to interest accrued after 7 June 2008 and to loan agreements entered into after January 2007.

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:

- Provisions for warranties
- Provisions for restructurings
- Provisions for expected losses from onerous contracts
- Provisions for pensions
- Provisions for termination benefits with respect to employees
- Provisions for jubilee benefits

Other provisions established based on applicable accounting standards are 100% tax deductible when they are set aside.

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:

- Receivables
- Financial assets and financial instruments measured at fair value through profit or loss
- Goodwill
- Debts, receivables, investments and cash receivables, provided that 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, including investment property	3
Parts of buildings, including investment property	6
Equipment, vehicles and machinery	20
Parts of equipment and equipment for research activities	33.3
Computer equipment, hardware and software	50
Crops lasting several years	10
Breeding animals	20
Other investments	10

**Tax relief for investments.** A taxable person may claim a reduction of the tax base in the amount of 30% of the amount invested in equipment and intangible assets (subject to certain limitations). The tax base can be decreased by a maximum of €30,000 in the tax period of the investment and by a maximum of €30,000 in each of the next five tax periods following the period of investment. However, the reduction may not exceed the amount of the tax base.

For 2010 through 2015, a special regulation applies in the region of Pomurje. Taxable persons may claim a reduction of the tax base in the amount of 70% of salaries paid to employees (under certain conditions). The reduction may not exceed the amount of the tax base. In addition, taxable persons may reduce their tax base by up to 70% of the amount invested in equipment and intangible assets, under certain conditions.

**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 40% of the expenditure incurred in R&D activities. Depending on the region in which the taxable person has its registered seat, the R&D relief may be increased to 50% or 60% of the expenditure incurred.

The taxable person may also carry forward the unused portion of the tax relief to the following five fiscal periods.

Such tax relief may not be granted for R&D that is financed by government funding or the EU.

**Tax relief for the hiring of employees.** An employer who hires certain employees may claim relief in the amount of 45% of the salary of such employees for the first 24 months of employment, but not exceeding the amount of the tax base. To be eligible for the relief, all of the following conditions must be met:

- The employee must be younger than 26 years old or older than 55 years old.
- The employee must have been registered as unemployed at the Employment Service of Slovenia for more than six months before the commencement of employment.
- The employee was not employed by the employer seeking the tax relief or a related party in the past 24 months.

- Agreement is reached on an employment contract for an indefinite time period.
- The overall number of employees employed at the employer in the tax period increased.

**Hidden profit distributions.** Hidden profit distributions are non-deductible expenditures and are subject to withholding tax as deemed dividends. The following items are treated as hidden profit distributions to a shareholder owning directly or indirectly at least 25% of the capital in the payer (or controlling the payer on the basis of the contract or having influence over the payer):

- Providing assets or performing services, including the discharge of debts, without consideration or at a price that is lower than the comparable market prices
- 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 if the taxpayer cannot prove that an unrelated entity would have agreed to the interest rate
- 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 period before or after the change of ownership (unless the business activity was significantly changed to maintain jobs or to restore business operations).

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 following table summarizes other significant taxes.

Nature of tax	Rate %
Value-added tax	
Standard rate	20
Reduced rate	8.5
Transfer tax on immovable property	2
Motor vehicle tax	
Petrol cars	0.5 to 28
Diesel cars; rate based on the level of exhaust emissions	1 to 31
Motorcycles	1.5 to 5
Camper vans; rate based on the power of the engine	6 to 18
Water Vessel Tax; amount of the tax depends on the length of the vessel (minimum of five meters) and the power of the engine	Various
Tax on insurance premiums	6.5

Nature of tax	Rate %
Property tax; levied on premises such as buildings and parts of buildings	0.1 to 1.5
Land use tax; payable by users of vacant and constructed building land; the municipalities fix the rates, taking into account various criteria	Various
Social security contributions, on monthly salary	
Health insurance, paid by	
Employer	7.09
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 (for occupational injuries and diseases), paid by employer	0.53

## E. Miscellaneous matters

**Foreign-exchange controls.** The official Slovenian currency is the euro (€).

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 selected 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
- 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 five 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.
- 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.

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.

The transfer-pricing rules can apply to transactions between domestic related parties in specific circumstances.

**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). For 2012 and future years, the applicable debt-to-equity ratio is 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.

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
Albania	5/10 (a)	7 (s)	7
Austria	5/15 (a)	0/5 (m)	5
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
Israel	5/10/15	0/5 (b)	5
Italy	5/15	10	5
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	0/15 (r)	0/5 (e)	5
Poland	5/15 (a)	0/10 (b)	10
Portugal	5/15 (a)	0/10 (b)	5
Qatar	5	5	5
Romania	5	0/5 (b)	5
Russian Federation	10	10	10
Serbia and Montenegro (n)	5/10 (a)	0/10 (b)	5/10 (i)
Singapore	5	5	5
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
Ukraine	5/15 (a)	5	5/10
United Kingdom	0/15 (p)	0/5 (q)	5
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 use of, or the right to use, the following:

- Copyrights of literary, artistic or scientific works (not including cinematographic works)
  - 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) Interest arising in a contracting state and paid to the government of the other contracting state is exempt from tax in the state of the payer. In the case of Slovenia, interest arising in Norway and paid with respect to a loan guaranteed or insured by Slovene Export and Development Bank Inc., Ljubljana on account of the Republic of Slovenia as authorized in accordance with the domestic law is exempt from tax in Norway.
- (f) Slovenia is honoring the tax treaties between the former Yugoslavia and these countries. Slovenia has concluded a new tax treaty with Cyprus, but the treaty is not yet effective.
- (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
  - The use of, or the 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 0% applies if any of the following circumstances exists:
- The interest is paid to the government including local authorities or the national bank.
  - The payer of the interest is the government including local authorities or the national bank.
  - The interest is paid with respect to a loan made, approved, guaranteed or insured by an institution that is authorized under internal law to act as an export financing institution on behalf of the contracting state.
- (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. The treaty does not apply to Kosovo.
- (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.
- (p) The 0% rate applies if the recipient of dividends owns more than 20% of the capital voting rights of the payer of the dividends.
- (q) The 0% rate applies if either of the following circumstances exists:
- The interest is paid to the government including local authorities or the national bank.
  - The payer and the recipient are both companies and one of the companies owns directly at least 20% of the capital of the other company, or a third company that is a resident of a contracting state holds directly at least 20% of the capital of both the payer company and the recipient company.
- (r) The 0% rate applies if any of the following circumstances exists:
- The recipient of dividends owns more than 15% of the capital voting rights of the payer of the dividends.

- In the case of Norway, the beneficial owner of the dividends is a resident of Norway who is a partner in a Norwegian partnership and alone or together with the other partners holds directly at least 15% of the capital of the company paying the dividends.
  - The dividends are derived and beneficially owned by the government of a contracting state.
- (s) A 0% rate applies if any of the following circumstances exists:
- The payer of the interest is the government of a contracting state, political subdivision, local authority or central bank of such state.
  - The interest is paid to the government of the other contracting state or a political subdivision, local authority or central bank of such state.
  - The interest is paid with respect to a loan made, approved, guaranteed or insured by an institution that is authorized in accordance with internal law on insurance and financing of international business transactions.

Slovenia has concluded new double tax treaties with Armenia, Belarus, Cyprus, Egypt, Iran and Kuwait, but these treaties are not yet effective.

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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.

## A. At a glance

Corporate Income Tax Rate (%)	28 (a)
Capital Gains Tax Rate (%)	14 (b)
Secondary Tax on Companies (%)	10 (c)
Branch Tax Rate (%)	33 (a)
Withholding Tax (%)	
Dividends	10
Interest	0 (d)
Royalties from Patents, Know-how, etc.	12 (e)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited (f)

- (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 35%. For gold mining companies that do not elect exemption from STC, nonmining income is taxed at a rate of 28% 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) The secondary tax on companies (STC) 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 33% company tax rate or nonresident companies, or to the mining income of oil and gas producers. Gold mining companies may elect exemption from STC. On 1 April 2012, the STC will be replaced by a conventional withholding tax imposed at a rate of 10%. See Section B.
- (d) Withholding tax on interest is proposed to be introduced on 1 January 2013. The rate will be 10% (subject to reduction under certain treaties).
- (e) This withholding tax applies to nonresidents.
- (f) 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 generally exempt from the look-through rules. Dividends paid by foreign companies that are not CFCs are taxable unless the shareholding of the South African-resident recipient is 10% or more (see the discussion of foreign dividends in *Dividends*). The participation exemption amendment changing the percentage to 10% is effective from 1 April 2012. At the time of writing, the legislation

was in draft form, but the change of the percentage to 10% is expected to be included in the final legislation.

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. Effective from 1 January 2012, interest attributable to an amount incurred by a resident or interest received as a result of the application or use of funds in South Africa is considered to be sourced in South Africa.

**Tax rates.** The basic corporate tax rate is 28%. Branch profits tax at a rate of 33% is imposed on South African-source profits of nonresident companies.

In addition, a secondary tax on companies (STC) is levied on South African-resident companies (other than headquarter companies) at a rate of 10% on dividends declared net of dividends received. Branches and nonresident companies subject to the 33% tax rate do not pay STC. Oil and gas producers under certain pre-2007 leases are exempt from STC on dividends distributed out of mining income. Subsequent leaseholders 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 34.55%. This rate applies to companies that distribute all of their after-tax profits as dividends.

*Secondary tax on companies and new dividend withholding tax.* STC is in the process of being abolished and is effective until 31 March 2012. STC is imposed on the company, not on the shareholders, and is regarded as a tax on income. It is not similar to a withholding tax and consequently does not qualify for relief under dividends articles in treaties. The following dividends received are deductible (STC creditable) in computing the amount of dividends declared that are subject to STC (and may be carried forward into the dividends withholding tax regime; see below):

- Local dividends that were subject to STC in the company from which they were received
- Foreign dividends that are derived from taxable South African branch profits or from dividends that were themselves subject to STC

The STC will be replaced by a withholding tax imposed at a rate of 10% on dividends declared on or after 1 April 2012.

The tax will be levied on dividends declared and paid by South African-resident companies or by foreign companies listed on the Johannesburg Stock Exchange (JSE). Dividends tax is a tax levied on the recipient of a dividend.

The declaring company must withhold the tax from the dividend paid and pay the tax to the South African Revenue Service (SARS) on behalf of the recipient.

Dividends are not subject to the withholding tax if any of the following circumstances exists:

- The beneficiary is a resident company.
- The beneficiary is a local, provincial or national government.
- The beneficiary is a specified tax-exempt entity.

- The dividend is paid to certain regulated intermediaries who in turn are liable to administer the tax on behalf of the declaring company.
- The dividend is paid by a micro business, up to R 200,000.
- The dividend is paid by a foreign company listed on the JSE to a nonresident beneficiary.
- The dividend is paid by a head office company.

A declaring company may only rely on the first three exemptions if the beneficiary has supplied it with a written declaration stating the following:

- It is exempt from the dividends tax.
- It will inform the company when it is no longer the beneficial owner of the shares.

If the beneficiary is a nonresident that wants to rely on a reduced dividends tax rate under a double tax treaty between South Africa and its country of residence, it must provide the company with a declaration that the reduced rate applies.

A dividend is any amount transferred or applied by a company for the benefit of its shareholders, excluding the following:

- Amounts that result in a reduction of the contributed tax capital of the company
- Shares in the company
- An acquisition by a listed company of its own shares through a general repurchase of shares in accordance with the JSE listing requirements

STC credits that are available to a company on 31 March 2012 are carried forward into the dividend tax regime for set-off against dividends in determining the net dividend subject to the tax. The STC credit is increased by dividends received after the introduction of the dividends tax from another company that had used its own STC credits when paying the dividends concerned and that had notified the recipient company of the amount of credits used. A company's STC credits are available for a period of five years after the introduction of the dividends tax.

**Special types of companies.** 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 35%. For gold mining companies that do not elect exemption from STC, nonmining income is taxed at a rate of 28% and any dividends declared by the company are subject to STC at a rate of 10%. The treatment of the dividend withholding tax in the context of mining companies had not yet been clarified at the time of writing.

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 development 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 28%.

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.

Small business corporations (SBCs) are taxed at the following rates on their taxable income:

- 0% on the first R 59,750 of taxable income
- 10% of the amount of taxable income exceeding R 59,750 but not exceeding R 300,000
- R 24,025 plus 28% on taxable income exceeding R 300,000

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.
- Its total personal service and investment income must not exceed 20% of its gross income.

**Capital gains.** Capital gains derived by resident companies are subject to capital gains tax (CGT) at an effective rate of 14% (50% of the normal corporate tax rate). The effective rate is 16.5% for nonresident companies.

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 (land and buildings) and interests in fixed property located in South Africa, and assets of a permanent establishment located in South Africa. An interest in fixed property includes a direct or indirect interest of at least 20% in a resident or nonresident company if, at the time of disposal of the interest, 80% or more of the market value of the net assets of the company is attributable to fixed property 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, net capital losses may not offset regular income.

The base cost for an 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
- 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 following amounts if such expenditure was originally included in the base cost:

- Expenditure that is recoverable or recovered
- Amounts paid by another person
- 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 an asset acquired before 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 (the asset must have been valued before 30 September 2004) or, alternatively, it may use a time-apportionment basis, which is determined by a formula.

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 less any amount that is included in the taxpayer's taxable income for income tax purposes. If a company makes a dividend distribution of an asset to a shareholder, it is deemed to have disposed of the asset for proceeds equal to the asset's market value.

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 10% 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 financial 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 (the seventh month if the tax year begins on 1 March) and by the end of the tax year. The second payment must generally be accurate to within 80% of the actual tax for the 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.

An e-filing system allows 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.

A South African resident (company or individual) holding 10% 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. The reduced participation rate of 10% is effective from 1 April 2012 for companies and 1 March 2012 for individuals and applies to dividends received or accrued on or after that date.

Recipients of dividends on shareholdings of less than 10% 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.
- 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.* Effective from 1 April 2012, dividend withholding tax at a rate of 10% will be applicable, subject to treaty rates. For further details, see *Secondary tax on companies and new dividend withholding tax*.

**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*) 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. The credit may be claimed only if the income is from a non-South African source. Excess credits may be carried forward but they are lost if they are not used within seven years.

Foreign taxes that cannot be claimed as a tax credit can generally be claimed as a deduction from taxable income.

STC is recognized as a creditable tax under certain tax treaties.

## C. Determination of trading income

**General.** The assessment to tax 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.
- The aggregate of such expenditure is less than R 80,000.

Nonresident companies are exempt from tax on South African-source interest income unless the income is directly related to the operation of a branch. Withholding tax on interest at a rate of 10% is proposed to be introduced on 1 January 2013. Relief may be available in treaties.

**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 in inventory.

#### **Tax depreciation (capital allowances)**

*Industrial plant and machinery.* 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.

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. For other plant or machinery of an SBC, the following allowances are granted:

- 50% in the first year of use
- 30% in the second year of use
- 20% in the third year of use

*Industrial buildings.* A 5% annual straight-line allowance is granted on the cost of the construction of, and improvements to, industrial 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
- 10% if constructed during the period of 1 July 1996 through 31 March 2000
- 5% if constructed after 1 April 2000

*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 8% per year for the following 10 years. If a building is renovated with only incidental additions, the allowance is 20% per year for five years.

*Other commercial buildings.* An allowance of 5% of the cost is generally available on commercial buildings not qualifying for any of the above allowances.

*Wear-and-tear allowance for movables.* 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
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 7,000 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 50% in the year of first use, 30% in the second year and 20% in the third year. 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
- 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 tax 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 shareholders and their companies. These transactions include the following:

- Asset-for-share transactions
- Amalgamation transactions
- Intragroup transactions
- Unbundling transactions
- 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 be offset against 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.

Permission must be obtained from the South African Reserve Bank (SARB) for the remittance of management fees. Royalties are freely remittable if the license agreement has been approved by the SARB (see *Debt-to-equity rules*). The remittance of dividends requires an auditor's certificate. South African companies raising loan financing offshore must obtain the authorization of the SARB regarding the terms and conditions. Foreign-equity investments are not restricted but share certificates must be endorsed "nonresident" by the SARB.

**Debt-to-equity rules.** The tax law includes measures that counter thin capitalization by adjusting both the interest rate and the amount of a loan based on arm's length principles. These measures generally require a debt-to-equity ratio of no more than 3:1, but this ratio is likely to be reduced. In certain circumstances, the thin-capitalization rules do not apply to headquarter companies.

**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 and potentially in related domestic transactions.

**Antiavoidance legislation.** In addition to transfer-pricing rules (see *Transfer pricing*), 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.
  - 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 does not prevent the imposition of employee withholding tax on fees earned. These companies are taxed at a rate of 33% 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.

**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 (other than a headquarter company) that has an interest of 10% or more in the CFC during the entire tax year of 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 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. Also, if the tax payable to a foreign government equals at least 75% of the tax liability that would have arisen in South Africa, no income needs to be imputed into the resident's taxable income.

See Section B for information regarding foreign attributable tax credits and carryforward rules.

**Headquarter companies.** A headquarter company is a South African-resident company that satisfies all of the following conditions:

- Each shareholder (resident or nonresident) holds 20% or more of the shares in the headquarter company.
- Eighty percent or more of the cost of the headquarter company's assets are attributable to investments in equity shares, loans and intellectual property in nonresident companies in which at least a 20% equity interest is held.
- Eighty percent or more of the company's income consists of, among other items, dividends, interest and royalties from the foreign companies referred to in the bullet above.

The CFC imputation rules do not apply to headquarter companies, unless 50% or more of its shares are held by South African residents. As a result of this concession, the net income of the headquarter company's foreign subsidiaries is not taxed in its hands, but in the hands of the ultimate shareholders if they are South African residents.

Dividends declared by headquarter companies are not subject to the STC (or the new dividends tax).

Headquarter companies are also exempt from the thin-capitalization rules if they on-lend loan proceeds received from their off-shore shareholders to their foreign subsidiaries in which they hold at least 20%.

### F. Treaty withholding tax rates

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

	Dividends (a) %	Interest (b) %	Royalties %
Algeria	10	0	10 (e)
Australia	5/10 (k)	0	10
Austria	5/10 (l)	0	0
Belarus	5/10 (l)	0	0
Belgium	5/10 (l)	0	0 (e)
Botswana	10	0	12
Brazil	10	0	10/15 (j)
Bulgaria	5/10 (l)	0	5/10 (i)
Canada	5/10 (m)	0	6 (e)(f)
China	5	0	10 (e)(g)
Croatia	5/10 (l)	0	5 (e)
Cyprus	0	0	0 (e)
Czech Republic	5/10 (l)	0	10 (e)
Denmark	5/10 (l)	0	0 (e)
Egypt	10	0	12
Ethiopia	10	0	20
Finland	5/10 (k)	0	0 (e)
France	5/10 (k)	0	0 (e)
Germany	7.5/10 (n)	0	0 (c)
Ghana	5/10 (k)	0	10 (e)
Greece	5/10 (l)	0	5/7 (h)
Hungary	5/10 (l)	0	0 (e)
India	10	0	10 (e)
Indonesia	10	0	10 (e)
Iran	10	0	10 (e)
Ireland	0	0	0 (e)
Israel	10	0	0 (d)
Italy	5/10 (l)	0	6 (e)
Japan	5/10 (l)	0	10 (e)
Korea (South)	5/10 (l)	0	10 (e)
Kuwait	0	0	10 (e)
Lesotho	10	0	10 (e)
Luxembourg	5/10 (l)	0	0 (e)
Malawi	10	0	0 (c)
Malaysia	5/10 (l)	0	5
Malta	5	0	10 (e)
Mauritius	5/10 (k)	0	0 (e)
Mexico	5/10 (k)	0	10
Mozambique	8/10 (o)	0	5
Namibia	5/10 (l)	0	10
Netherlands	5 (k)	0	0
New Zealand	5/10 (l)	0	10
Nigeria	7.5/10 (r)	0	7.5 (e)
Norway	5/10 (l)	0	0 (e)
Oman	0	0	0
Pakistan	10	0	10 (e)

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Poland	5/10 (l)	0	10
Portugal	10	0	10
Romania	10	0	12
Russian Federation	10	0	0
Rwanda	10	0	10
Saudi Arabia	5/10 (k)	0	10
Seychelles	0	0	0
Singapore	5/10 (k)	0	5 (e)
Slovak Republic	5/10 (l)	0	10
Spain	5/10 (l)	0	5 (e)
Swaziland	10	0	0 (c)
Sweden	0/7.5/10 (p)	0	0 (c)(e)
Switzerland	5/10 (q)	0	0
Taiwan	5/10 (k)	0	10 (e)
Tanzania	10	0	10
Thailand	10	0	12
Tunisia	10	0	10
Turkey	10	0	10
Uganda	10	0	12
Ukraine	5/10 (q)	0	10
United Kingdom	10	0	0 (c)
United States	5/10 (k)	0	0 (e)
Zambia	10	0	0 (c)
Zimbabwe	10	0	0 (c)
Nontreaty countries	10	0	12

(a) Effective from 1 April 2012, dividends are 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) Royalties are exempt if they are subject to tax in the recipient country. Otherwise, the rate is 12%.

(d) In general, royalties are exempt if they are 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) The rate applies only if the recipient is the beneficial owner of the royalties.

(f) The rate is 10% for franchise royalties.

(g) The rate is 7% for rent paid for equipment.

(h) 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.

(i) 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.

(j) The 15% rate applies to royalties paid for the use of trademarks. The 10% rate applies to other royalties.

(k) The 5% rate applies if the beneficial owner is a company that owns at least 10% of the shares. The 10% rate applies to other dividends.

(l) The 5% rate applies if the beneficial owner is a company that owns at least 25% of the shares. The 10% rate applies to other dividends.

(m) The 5% rate applies if the beneficial owner is a company that owns at least 25% of the shares or voting power. The 10% rate applies to other dividends.

(n) The 7.5% rate applies if the beneficial owner is a company that owns at least 25% of the shares or voting power. The 10% rate applies to other dividends.

(o) The 8% rate applies if the beneficial owner is a company that owns at least 25% of the shares. The 10% rate applies to other dividends.

(p) The 10% rate applies to beneficial owners (other than companies) of the dividends. The 0% rate applies if the dividends are paid to companies that own at least 25% of the shares and if the dividends are not taxable in Sweden. The 7.5% rate applies to other dividends.

(q) The 5% rate applies if the beneficial owner is a company that owns at least 20% of the shares. The 10% rate applies to other dividends.

(r) The 7.5% rate applies if the beneficial owner is a company that owns at least 10% of the shares or voting power. The 10% rate applies to other dividends.

South Africa has ratified comprehensive tax treaties with Congo (Democratic Republic of), Gabon and Kenya.

South Africa has signed a comprehensive tax treaty with Sudan, but this treaty has not yet been ratified.

South Africa is currently negotiating comprehensive tax treaties with Angola, Bangladesh, Cameroon, Chile, Cuba, Estonia, Latvia, Lithuania, Madagascar, Morocco, Qatar, Senegal, Serbia, Sri Lanka, Syria, the United Arab Emirates and Vietnam, but these treaties have not yet been signed.

South Africa is renegotiating tax treaties with the Czech Republic, Germany, Lesotho, Malawi, Mauritius, Namibia, the Netherlands, Singapore, Switzerland, Zambia and Zimbabwe.

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## A. At a glance

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (b)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	19/21 (c)
Interest	19/21 (d)
Royalties from Patents, Know-how, etc.	24/24.75 (c)
Branch Remittance Tax	19/21 (e)
Net Operating Losses (Years)	
Carryback	0
Carryforward	15/18 (f)

- (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.  
 (f) See Section C.

## 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

In addition, the tax authorities may presume that an entity resident in a tax haven or in a country with no income taxation is tax resident in Spain if any of the following circumstances exist:

- The majority of its assets is directly or indirectly located in Spain.
- A majority of its rights should be exercised in Spain.
- The principal activity of the entity is carried out in Spain.

The above measure 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 occur.

**Tax rates.** The general tax rate for residents and nonresidents that conduct business activities in Spain through a permanent establishment is 30%. Entities that earned (on a group basis) net revenue of less than €10 million in the immediately preceding tax year are taxed at a rate of 25% on profits up to €300,000, and at a rate of 30% on the tax base exceeding this amount. Effective for fiscal years beginning during 2009, 2010, 2011 and 2012, the tax rate applicable to small and medium-sized enterprises with fewer than 25 employees that maintain or increase the number of employees and that have net revenues of less than €5 million is 20% on the tax base up to €120,202.41 (effective for fiscal years commencing during 2011 and 2012, €300,000) and 25% on the tax base 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. Such reduced rate applies up to a maximum amount of taxable income. This maximum amount equals the lesser of the following:

- The ratio of income derived from qualified ZEC transactions with respect to total income
- An amount determined on the basis of the jobs created, which varies according to the type of activity of the company

The amount described in the second bullet above is determined based on the following table.

Net increase in number of employees	Taxable income subject to reduced rate		
	Industrial activities (€)	Service activities (€)	Other services (€)
From 3 to 8	1,800,000	1,500,000	1,125,000
From 9 to 12	2,400,000	2,000,000	1,500,000
From 13 to 20	3,600,000	3,000,000	2,250,000
From 21 to 50	9,200,000	8,000,000	6,000,000
From 51 to 100	21,600,000	18,000,000	13,500,000
More than 100	120,000,000	100,000,000	75,000,000

In general, nonresidents operating in Spain without a permanent establishment are taxable at a general rate of 24% (for the 2012 and 2013 tax years, the tax rate is 24.75%). Nonresidents without a permanent establishment that operate in Spain may deduct any expense allowed by the Personal Income Tax Law, as provided in Law 36/2006, 28 November (this law also refers to the Corporate Income Tax Law to determine the net tax base in the case of economic activities), if the taxpayer is resident in a European Union (EU) member state and can prove that these expenses are directly linked to their Spanish-source income and have a “direct and fully inseparable nexus” with the activity performed in Spain. Dividends and interest received by nonresidents are subject to a final withholding tax at a rate of 19% (for the 2012 and 2013 tax years, the tax rate is 21%). The tax rate applicable to income from reinsurance operations is 1.5%. A 4% tax rate applies to Spanish-source income generated by companies resident abroad operating ships and aircraft in Spain. Interest income is exempt from tax if the recipient is resident in an EU member state (or if the recipient is an EU permanent establishment of a resident in another EU member state) that is not on the Spanish tax haven list. Interest paid to nonresidents on Spanish Treasury obligations is exempt from tax. 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. Effective from 1 July 2011, royalties paid to associated EU resident companies or permanent establishments are exempt from tax in Spain if specific conditions are met.

In addition to nonresident income tax at a rate of 30%, nonresidents operating in Spain through a permanent establishment are subject to a branch remittance tax at a rate of 19% (for the 2012 and 2013 tax years, the tax rate is 21%), unless one of the following exemptions applies:

- Branches of EU resident entities, other than tax-haven residents, are exempt from the tax.
- A branch can be exempt from tax if Spain and the country of residence of its head office have entered into a double tax treaty that does not provide otherwise and grants reciprocal treatment.

**Capital gains.** Spanish law generally treats capital gains as ordinary 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 nonresidents without a permanent establishment in Spain are taxed at a rate of 19% (for the 2012 and 2013 tax years, the tax rate is 21%). 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 the Spanish tax haven list, unless the gains are derived from the transfer of shares and either of the following circumstances exists:

- The seller directly or indirectly owns at least 25% of the company.
- The company's assets directly or indirectly 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 sale 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 and permanent establishments of nonresident entities or individuals must make payments on account of corporate income tax or nonresidents income tax, respectively, 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 (however, see next paragraph) 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.

Effective for 2011, 2012 and 2013, the tax rate mentioned in the second bullet above (that is, 5/7 of the corporate income tax rate) is increased for taxpayers with revenue of more than €20 million in the immediately preceding tax year. If revenue is between €20 million and €60 million, the tax rate equals 8/10 of the corporate income tax rate. If revenue exceeds €60 million, the tax rate equals 9/10 of the corporate income tax rate.

**Dividends.** Dividends received by a resident company from another resident company are subject to corporate tax, as well as to a 19% (for the 2012 and 2013 tax years, the withholding tax rate is 21%) 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 is committed to own)

at least 5% of the paying company for an uninterrupted period of one year (the shareholding interest percentage may be reduced to 3% under certain circumstances). 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 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 company 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 that are not on the Spanish tax haven list are exempt from withholding tax if the parent company owns directly or indirectly at least 5% 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 anti-avoidance provision applies in situations in which the ultimate shareholder is not an EU resident.

**Foreign portfolio holding company regime.** 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 engaged in the administration and management of participations in the equity of non-resident entities. ETVEs may also be engaged in other activities. In addition to the general exemption for dividends and capital gains derived from shares in qualifying foreign companies as described in *Participation exemption regime and foreign tax relief*, 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.

**Participation exemption regime and foreign tax relief.** The exemption method may be used to avoid double taxation on dividends received from abroad and on 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 tax credit is allowed for underlying foreign taxes paid by a subsidiary on the profits out of which dividends are paid and for foreign withholding taxes paid on dividends.

The credit method (see below) and exemption cannot be used with respect to the same income. Tax credits granted under the credit method may be carried forward for 10 years.

A tax credit is available for resident entities deriving foreign-source income that is effectively taxed abroad. Such credit is equal to the lesser of the following:

- The Spanish corporate tax payable in Spain if the foreign income had been obtained in Spain
- The tax effectively paid abroad on the foreign-source income (in accordance with applicable double tax treaty provisions)

### **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 Spanish generally accepted accounting principles (Spanish GAAP), as adjusted for certain statutory tax provisions. Spanish GAAP follows several criteria contained in International Financial Reporting Standards (IFRS).

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.

Certain items are not deductible from gross income, such as the following:

- Penalties and fines
- Corporate income tax payments
- Gifts and donations
- Expenditures for the improvement or enhancement of capital assets
- Amounts directly or indirectly remunerating own equity (for example, dividends and other payments made by entities in favor of their shareholders)

- Expenses related to services carried out by persons or entities that are resident in a listed tax haven, unless the taxpayer can prove that the expense relates to an effectively performed transaction
- 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. Weighted average price is the generally accepted method, but first-in, first-out (FIFO) is also accepted. A common method is required with regard to inventories of the same nature and use.

**Provisions.** Provisions that are properly recorded are generally tax-deductible except for those specified by law.

**Depreciation.** All fixed or movable tangible assets (except land) 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. They are generally amortized at an annual rate of 10%, unless it can be proved that their useful life is shorter than 10 years. Under certain circumstances, goodwill and intangible assets with an indefinite life are amortizable for tax purposes. Goodwill recorded in the books of a Spanish corporate taxpayer may be amortized for tax purposes at an annual rate of 5% if certain requirements are satisfied. During the 2012 and 2013 tax years, the maximum annual rate is 1%.

Under certain conditions, Spanish-resident entities are entitled to amortize for tax purposes the financial goodwill embedded in shares of qualified foreign subsidiaries with respect to the following acquisitions:

- Acquisitions carried out before 21 May 2011 in China and India or in other countries if it can be proven that cross-border mergers cannot be accomplished
- Other acquisitions, carried out before 21 December 2007

The amortization of financial goodwill is set at a maximum rate of 5%. However, for 2011, 2012 and 2013, the maximum rate is set at 1%.

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.

Maximum depreciation rates for tax purposes 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</b> years
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
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. 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.

Investments in new tangible assets and real estate in Spain or abroad carried from 2009 through 31 March 2012 may qualify for a free tax depreciation allowance. For investments made during tax years that began during 2009 and 2010, such tax benefit is conditioned on the maintenance of the level of employment. Any depreciation allowance on such assets that was pending to be fully accelerated by 31 March 2012 will still be available to be used but will be subject to certain limitations during the 2012 and 2013 tax years.

Gross income derived from certain intangible assets may be reduced by 50% for tax purposes if certain criteria are met. The following intangibles are subject to this special regime:

- Patents
- Drawings
- Models and blueprints
- Formulas or secret procedures
- Rights regarding information pertaining to industrial, commercial or scientific experiences

The special regime described above is not available in the fiscal year following the year in which the amount of income exceeds six times the cost of the asset.

**Relief for losses.** Effective for tax periods beginning in or after 2012, tax losses may be carried forward and offset against future

taxable income for a period of 18 tax years. Previously, the carry-forward period was 15 years. For newly established enterprises, the 18-year period begins in their first profitable year for tax purposes. Tax losses cannot be carried back.

Effective for 2011, 2012 and 2013, the following transitory restrictions on the compensation of tax losses carried forward are imposed on taxpayers with revenue exceeding €20 million in the immediately preceding year:

- If revenue within the 12 months before the beginning of the tax period ranged from €20 million to €60 million, tax losses carried forward may be offset up to a maximum amount of 75% of taxable income.
- If revenue in the period mentioned above exceeded €60 million, the limitation equals 50% of taxable income.

**Groups of companies.** A group of companies may file a consolidated tax return if the election to apply this regime is carried out before the beginning of the tax year in which the regime is to be applied and if the tax authorities are notified of the election. After the group elects taxation under the consolidated regime, the regime applies indefinitely, provided that 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 if certain requirements are met.

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 (70% for companies quoted on the stock exchange) and it maintains such ownership for the entire tax year of consolidation.
- It is not subject to certain look-through tax regimes.
- 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.

Pre-consolidation losses can be used only up to the amount of the individual positive tax base that is aggregated to the consolidated tax base.

#### **D. Other significant taxes**

The following table summarizes other significant taxes.

Nature of tax	Rate (%)
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	18
Rate on certain necessary products and services	8
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
Social security and employee-related fund contributions, calculated on an employee's total compensation, with certain limitations; paid by	
Employer	30.9
Employee	6.354
Capital duty on reductions and liquidations of companies	1

## E. Miscellaneous matters

**Foreign-exchange controls.** Exchange controls are administered by the Bank of Spain and the Ministry of Economy and Finance. Exchange controls were liberalized several years ago. As a result, only a few, simple reporting requirements are now imposed, primarily for statistical purposes.

**Restrictions on the deduction of financial expenses.** Effective for tax years beginning in 2012 and future tax years, the thin-capitalization rule (debt-to-equity ratio of 3:1) is abolished and other limitations on the deductibility of financial expenses have been introduced. In general, net interest expenses exceeding 30% of earnings before interest, tax, depreciation and amortization (EBITDA), with some adjustments, may not be claimed as a deduction for tax purposes in the year of their accrual (with some exceptions, such as a minimum allowance of €1 million per year). The excess may be subject to carryforward in the following 18 years. This restriction applies regardless of whether the interest is paid to a related party or an unrelated lender. In addition, interest expense on intragroup financing related to the acquisition (or equity increase) of participation in group entities is disallowed unless valid business reasons for such transactions are proven.

**Antiavoidance legislation.** To prevent fraud, the tax code contains several antiavoidance measures in various chapters. Substance-over-form principles apply.

**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.

These rules do not apply to EU-controlled subsidiaries if the Spanish shareholder proves that the incorporation of the foreign entity was undertaken for sound business reasons and such entity carries on business activities.

**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.
- The law provides for secondary adjustments. Under this measure, if the agreed value in a transaction differs from the normal market value, the difference between the values is recharacterized by following a substance-over-form approach. In particular, for a transaction between a company and a shareholder, the difference (proportionally to the participation in the entity) is considered a dividend if such difference is in favor of the shareholder or a contribution by the shareholder to the entity's equity if the difference is in favor of the entity.
- 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 entered into force on 19 February 2009. This documentation is 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. However, the absence (or incompleteness) of documentation is subject to penalties, even if no adjustments are assessed.

Regulations provide the following three exceptions to the obligation to prepare statutory transfer-pricing documentation:

- When the transaction takes place between entities that form part of a Spanish tax consolidated group
- When the transaction is carried out between members of an Economic Interest Grouping (Agrupaciones de Interés Económico) or a Temporary Business Alliance (Uniones Temporales de Empresas)
- When the transaction is carried out within the scope of a public stock offering

Royal Decree 897/2010 introduced the following exceptions regarding the statutory documentation requirements, effective from 2010:

- Total transactions with the same entity not exceeding €250,000 per year need not be documented.

- Total transactions with the same entity not exceeding €100,000 per year must not be documented if the company is deemed a “small or medium size enterprise.”

Some specified transactions must be documented in any case, such as transactions performed with group “related parties” that are tax resident in a tax-haven jurisdiction. Article 16.3 of the Spanish Corporate Income Tax Act provides a definition of “related parties.”

In addition, transactions performed with related or unrelated residents of listed tax havens must comply with the arm’s length principle and are subject to statutory documentation requirements.

## F. Treaty withholding tax rates

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

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	%	%	%
Albania	0/5/10 (c)	6 (d)	0
Algeria	5 (e)	5 (d)	7 (f)
Argentina	10 (e)	12.5 (g)	10 (h)
Armenia (i)(j)	0/10 (k)	5	5/10 (l)
Australia	15	10	10
Austria	10 (e)	5	5
Barbados	0/5 (m)	0	0
Belgium	0 (n)	10 (d)	5
Bolivia	10 (e)	15 (d)	15
Bosnia- Herzegovina	5 (o)	7 (d)	7
Brazil	15	15 (p)	15 (q)
Bulgaria	5 (e)	0	0
Canada	15	15	10
Chile	10 (r)	15 (s)	10 (t)
China	10	10	10
Colombia	0/5 (u)	10	10
Costa Rica (v)	5/12 (w)	5/10 (x)	10
Croatia	0 (y)	8 (d)	8
Cuba	5 (e)	10 (d)	5 (z)
Czechoslovakia (aa)	5 (e)	0	5
Ecuador	15	10 (d)(bb)	10 (cc)
Egypt	9 (dd)	10 (d)	12
El Salvador	0/12 (ee)	10 (d)	10
Estonia	5 (e)	10 (d)	10 (ff)
Finland	10 (e)	10	5
France	15 (gg)	10 (d)	5
Georgia	0/10 (jj)	0	0
Germany (hh)	10 (e)	10	5
Greece	5 (kk)	8 (d)	6
Hong Kong SAR (i)	0/10 (m)	5 (d)	5
Hungary	5 (e)	0	0
Iceland	5 (e)	5 (ll)	5
India	15	15 (g)	10/20 (mm)
Indonesia	10 (e)	10	10
Iran	5/10 (nn)	7.5 (d)	5
Ireland	15	0	10 (oo)

	<b>Dividends (a)</b>	<b>Interest (b)</b>	<b>Royalties</b>
	%	%	%
Israel	10	10 (pp)	7 (qq)
Italy	15	12 (g)	8 (rr)
Jamaica	5/10 (ss)	10 (d)	10
Japan	10 (e)	10	10
Kazakhstan	5/15 (tt)	10 (d)	10
Korea (South)	10 (e)	10 (g)	10
Latvia	5 (uu)	10 (d)	10 (ff)
Lithuania	15 (vv)	10 (d)	10 (t)
Luxembourg	10 (e)	10 (g)	10
Macedonia	5 (ww)	5 (d)	5
Malaysia	5 (xx)	10	7 (yy)
Malta	0 (zz)	0	0
Mexico	5 (e)	15 (aaa)	10 (z)
Moldova	0 (bbb)	5 (d)	8
Morocco	10 (e)	10	10 (cc)
Netherlands	10 (e)(ccc)	10	6
New Zealand	15	10 (ll)	10
Norway	10 (e)	10 (d)	5
Pakistan	5/7.5/10 (ddd)	10 (eee)	7.5
Panama (fff)	0/5/10 (ggg)	5 (d)	5
Philippines	10 (e)	15 (hhh)	15 (iii)
Poland	5 (e)	0	10 (jjj)
Portugal	10 (e)	15	5
Romania	10 (e)	10	10
Russian Federation	5 (kkk)	5 (lll)	5
Saudi Arabia	5 (mmm)	5	8
Serbia	5/10 (kk)(nnn)	10 (nnn)	5/10 (nnn)(ooo)
Singapore	0/5 (jj)(ppp)	5 (d)	5
Slovenia	5 (e)	5	5
South Africa	15 (vv)	5 (qqq)	5
Sweden	10 (e)	15	10
Switzerland	15 (xx)	0	5 (rrr)
Thailand	10	15 (g)	15 (oo)
Trinidad and Tobago	0/5/10 (bbb)(sss)	8 (sss)	5 (sss)
Tunisia	5 (e)	10 (ttt)	10
Turkey	15 (uuu)	15 (vvv)	10
USSR (www)	18	0	5 (jjj)
United Arab Emirates	15 (xxx)	0	0
United Kingdom	10 (e)	12	10
United States	10 (e)	10 (d)	10 (oo)
Uruguay	0/5 (yyy)	10 (d)	5/10 (zzz)
Venezuela	10 (rrr)	10 (aaaa)	5
Vietnam	7 (ii)	10 (e)	10
Nontreaty countries (bbbb)	19/21	19/21	24/24.75

- (a) Distributions by Spanish subsidiaries to parent companies in EU member states are exempt from withholding tax if the parent company owns at least 5% 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 anti-avoidance provision also applies in situations in which the ultimate shareholder is not an EU resident.

- (b) Interest paid to an EU resident without a permanent establishment in Spain is exempt from tax if the EU country is not on the Spanish tax haven list.

- (c) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 75% of the capital of the distributing company. The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 10% of the capital of the distributing company.
- (d) Certain interest payments are not subject to withholding tax.
- (e) The treaty withholding rate tax is increased to 15% in certain circumstances if the recipient is not a corporation or if the shareholding does not exceed a certain percentage.
- (f) A 14% rate applies to royalties paid for artistic, scientific or literary works.
- (g) 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.
- (h) A 3% rate applies to royalties paid for the use of news. A 5% rate applies to royalties paid for copyrights of musical, literary, dramatic or artistic works. A 15% rate applies to other copyright royalties.
- (i) The treaty has been negotiated, but it has not yet been ratified.
- (j) The treaty provides for a tax sparing in favor of Armenia for the five years following the entry into force of the treaty.
- (k) The 0% rate applies if all of the following conditions are satisfied:
- The recipient of the dividends is the beneficial owner of the income.
  - The direct or indirect shareholding is equal to or higher than 25%.
  - A minimum two-year shareholding period has been fulfilled.
  - Dividends are not subject to tax in the state of residency of the recipient of the dividends.
- (l) The 5% rate applies to royalties for copyrights of literary, artistic or scientific works (including films and videotapes used for its reproduction on television or radio).
- (m) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 25% of the capital of the distributing company.
- (n) The 0% rate applies if all of the following conditions are satisfied:
- The recipient of the dividends is a corporation.
  - The shareholding is equal to or higher than 25%.
  - Exemption is allowed 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.
- (o) A 15% rate applies if the shareholding is less than 20%.
- (p) A 10% rate applies to interest paid to financial institutions for long-term (10 or more years) loans for goods or equipment.
- (q) 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).
- (r) 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.
- (s) 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.
- (t) A 5% rate applies to royalties paid for the use of industrial, commercial and scientific equipment.
- (u) The 0% rate applies if the dividends are received by a company that holds a direct or indirect shareholding of at least 20% in the capital of the distributing company.
- (v) The protocol includes a most-favored-nation clause under which Costa Rica automatically will provide similar tax treatment to Spanish residents if Costa Rica enters into a treaty with a third country that enters into force and that offers more beneficial tax treatment for dividends, interest, royalties and/or income from personal independent services.
- (w) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 20% of the capital of the distributing company.
- (x) The 5% rate applies to loans with a maturity exceeding five years.
- (y) A 15% rate applies if the shareholding is less than 25%.
- (z) Certain copyright royalties are exempt.
- (aa) Spain honors the Czechoslovakia treaty with respect to the Czech and Slovak Republics.
- (bb) A 5% rate applies to certain loans.
- (cc) A 5% rate applies to royalties paid for copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).

- (dd) A 12% rate applies if the shareholding is less than 25%.
- (ee) The 12% rate applies if the shareholding is less than 50%.
- (ff) A 5% rate applies to royalties paid for industrial, commercial or scientific equipment.
- (gg) No withholding tax is imposed if the recipient is a company that is subject to corporate income tax and that holds a participation of at least 10% in the payer.
- (hh) This tax treaty has been renegotiated, but the new tax treaty has not yet been ratified. Under the new treaty, 0% and 15% withholding tax rates are established for dividends and a 0% rate is established for interest and royalties, under certain conditions.
- (ii) A 10% rate applies if the shareholding is at least 25%, but less than 50%. A 15% rate applies if the shareholding is less than 25%.
- (jj) The 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 10% of the capital of the distributing company.
- (kk) The withholding tax rate is 5% if the effective beneficiary of the dividends is a corporation and if the shareholding is equal to or higher than 25%. The withholding tax rate is 10% for other dividends.
- (ll) 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.
- (mm) The 20% rate applies to certain royalties.
- (nn) The 10% rate applies if the shareholding is less than 20%.
- (oo) A 5% rate applies to royalties paid for copyrights of musical compositions and literary, dramatic or artistic works. An 8% rate applies to royalties paid for the following:
- Motion picture films
  - Films, tapes and other means of transmission or reproduction of sounds
  - Industrial, commercial or scientific equipment
  - Copyrights of scientific works
- (pp) 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.
- (qq) 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.
- (rr) The rate is 4% for royalties paid for copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).
- (ss) The 10% rate applies if the shareholding is less than 25%.
- (tt) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly or indirectly controls at least 10% of the capital of the distributing company.
- (uu) The treaty withholding tax 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.
- (vv) 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.
- (ww) A 15% rate applies if the shareholding is less than 10%.
- (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 5% rate applies if the shareholding is less than 25%.
- (aaa) The withholding tax rate is 10% if the effective beneficiary of the interest is a financial entity.
- (bbb) The 0% rate applies if the dividends are received by a company that holds directly or indirectly a shareholding of at least 50% in the capital of the distributing company. A 5% rate applies if the direct shareholding is more than 25% but less than 50%. Otherwise, a 10% rate applies.
- (ccc) 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.
- (ddd) The 5% rate applies if the beneficial owner of the dividends is a company that has owned directly for the six-month period ending on the date on which entitlement to the dividends is determined at least 50% of the voting shares of the distributing company. The 7.5% rate applies if the beneficial owner of the dividends is a company that has owned directly for the period of six months ending on the date on which entitlement to the dividends is determined at least 25% of the voting shares of the distributing company.

- (eee) Certain interest payments are not subject to withholding tax.
- (fff) Tax treaty provisions do not apply if the dividend, interest or royalties paid by a Panamanian resident are sourced in Spain or in a country that has not entered into a tax treaty with Spain and if such income has not been effectively taxed in Panama.
- (ggg) The 0% rate applies if the beneficial owner of the dividends is a capital company that directly controls at least 80% of the capital of the distributing company and if certain conditions are satisfied. The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly controls at least 40% of the capital of the distributing company.
- (hhh) A 10% rate applies to interest paid with respect to sales of industrial equipment or publicly traded bonds.
- (iii) A 20% rate applies to royalties paid with respect to films, television or radio. A 10% rate applies to royalties derived in preferred areas of activities.
- (jjj) A 0% rate applies to royalties paid for copyrights of literary, dramatic, musical or artistic works (excluding motion picture films and television films or videotapes).
- (kkk) 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.
- (lll) 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.
- (mmm) A 0% rate applies if the beneficial owner of the dividends is a company that directly controls at least 25% of the capital of the distributing company.
- (nnn) A most-favored-nation clause applies.
- (ooo) The 5% rate applies to royalties paid for the use of copyrights of literary, artistic or scientific works, including cinematographic films or films or tapes used for radio or television broadcasting, but excluding computer software. The 10% rate applies to royalties paid for the use of patents, trademarks, designs or models, plans, secret formulas or processes and computer software, for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
- (ppp) The 5% rate applies if the distributing company is a stock-listed real estate investment company and if the beneficial owner of the dividends directly or indirectly controls less than 10% of the capital of the distributing company.
- (qqq) A 0% rate applies to interest paid to financial institutions for long-term (seven years or more) loans.
- (rrr) A 0% rate applies if certain conditions are met.
- (sss) A limitation-of-benefits clause in the treaty may apply.
- (ttt) A 5% rate applies to loans over seven years.
- (uuu) A 5% rate applies to certain dividend distributions.
- (vvv) A 10% rate applies to interest derived from loans granted by banks or in connection with sales on credit of merchandise or equipment.
- (www) Spain honors the double tax treaty with the former USSR with respect to Belarus, Kyrgyzstan, Tajikistan and Ukraine.
- (xxx) 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.
- (yyy) The 0% rate applies if the beneficial owner of the dividends is a capital company that directly controls at least 75% of the capital of the distributing company.
- (zzz) The 5% rate applies to royalties paid for copyrights of literary, artistic or scientific works.
- (aaaa) A 4.95% rate applies to interest paid to financial institutions.
- (bbbb) See Section B.

Spain is in the process of negotiation, ratification or signature of tax treaties with Armenia, Azerbaijan, Belarus, the Hong Kong SAR, Kuwait, Namibia, Nigeria, Peru, Senegal, Syria, and Uruguay. It is most likely that the next tax treaties to enter into force will be those concluded with Germany and the Hong Kong SAR.

Spain is negotiating agreements on exchange of tax information with Bermuda, the Cayman Islands, the Cook Islands, St. Lucia and St. Vincent and the Grenadines.

Spain is renegotiating its tax treaties with Brazil, Germany, Switzerland and the United States.

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*This chapter reflects amendments based on budget proposals announced on 21 November 2011. At the time of writing, these amendments had not been enacted. After enactment, these amendments will be effective from 1 April 2011, unless specified otherwise.*

## A. At a glance

Corporate Income Tax Rate (%)	28 (a)
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	28 (a)
Withholding Tax (%)	
Dividends	10 (b)
Interest	10 (c)
Royalties from Patents, Know-how, etc.	10

Rent for Commercial Premises	10
Construction Contracts	1 (d)
Sale Price of Gems at Gem Auctions	2.5
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 10% 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.
- (d) This withholding tax is imposed on payments made to contractors under construction contracts. It applies to payments exceeding Rs. 50,000 per month or Rs. 500,000 per year in aggregate.
- (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 28%. 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 12%.

Companies in the business of the import, manufacture and sale of liquor or tobacco are subject to tax at a rate of 40% (the prior rate was 35%).

Profits and income arising from Islamic financial transactions relating to Islamic financial instruments will be taxed based on regulations to be issued by the Commissioner General of Inland Revenue.

Profits derived from priority sectors are taxed at a rate of 12%. The 12% rate applies to the following priority sectors:

- Construction
- Exports
- Tourism

Export profits derived by direct and indirect exporters from products that include more than 65% value addition and that are sold with a brand name registered in Sri Lanka with patents rights reserved in Sri Lanka are subject to tax at a rate of 10%.

Profits from agriculture are taxed at a rate of 10%, effective from 1 April 2011.

Venture capital companies and petroleum exploration companies are subject to tax at a rate of 12%.

Undertakings for the operation and maintenance of storage facilities, local software development or the supply of labor are subject to tax at a rate of 10%.

Profits and income from educational services are taxed at a rate of 10%.

Profits and income of an undertaking engaged in the manufacturing of articles or the provision of services that has turnover of less than Rs. 300 million is taxed at a rate of 10%.

Profits and income of newly established branches of commercial banks dedicated to development banking are taxed at a rate of 24%.

Profits and income from research and development (R&D) activities are taxed at a rate of 20%.

A 12% rate applies to manufacturing income attributable to the amount of tea purchased for manufacturing by a joint venture entered into by a grower and manufacturer of tea with a tea exporter, for the purpose of exporting pure Sri Lankan tea in value-added form with a Sri Lankan brand name.

Profits and income from the local manufacturing of handloom products is taxed at a rate of 12%.

Profits and income derived from healthcare services is taxed at a rate of 12%.

Clubs and associations are subject to tax at a rate of 10%.

Nonresident companies may qualify for the 12% rate in the priority sectors, except for construction. Foreign-currency banking units of banks are subject to income tax at a rate of 28% on their offshore and onshore profits.

**Tax incentives.** All of the income tax incentives offered have been streamlined and are now included in the Inland Revenue Act.

The Board of Investment (BOI) of Sri Lanka incentives are limited to those relating to customs duties, exchange-control restrictions and certain other items.

Significant tax incentives currently offered include the incentives described below.

A four-year tax holiday is granted to new enterprises engaged in agriculture and/or agroprocessing, animal husbandry and/or processing, fisheries and/or fish processing or creative work, with a minimum investment of Rs. 25 million.

Medium-scale enterprises engaged in specified activities are eligible for tax holidays based on the amount of the investment. The following are the tax holidays:

Investment		Length of tax holiday Years
Exceeding Rs. millions	Not exceeding Rs. millions	
50	100	4
100	200	5
200	—	6

Large-scale enterprises engaged in specified activities, including processing and solid-waste management, are eligible for tax holidays based on the amount of the investment. The following are the tax holidays:

Investment		Length of tax holiday Years
Exceeding Rs. millions	Not exceeding Rs. millions	
300	500	6
500	700	7
700	1,000	8
1,000	1,500	9
1,500	2,500	10
2,500	—	12

A 5-year tax holiday, followed by a concessionary tax rate of 12%, is granted to new enterprises engaged in the production of certain items to replace imports that make the following investments.

Products	Investment (US\$ millions)
Cement	50
Steel	30
Milk powder	30
Pharmaceuticals	10
Fabric	5

A concessionary tax rate of 12% is granted to existing enterprises that are engaged in the production of the above-mentioned products to replace imports and make the above-mentioned investments.

Profits and income derived from undertakings for the operation of port terminals in Sri Lanka are exempt from income tax.

Profits and income derived from services rendered in ports in Sri Lanka in the course of business carried on in the ports are exempt from income tax.

Profits and income of undertakings for the construction of ports in Sri Lanka are exempt from tax.

A five-year tax holiday is granted to a new company that invests from US\$5 million to US\$10 million in a new undertaking engaged in specified activities with respect to the development of the national economy.

A five-year tax holiday beginning on 1 April 2011 is granted for investments in fishing, cultivation and primary processing of agricultural seeds or planting materials.

A tax exemption is granted for profits earned in foreign currency by manufacturers of textiles, leather products, footwear and handbags from supplies made to foreign purchasers that establish headquarters in Sri Lanka for management, finance, supply chain and billing.

A five-year income tax holiday beginning 1 April 2011 is granted to the Ceylon Electricity Board, National Water Supply and Drainage Board, Ceylon Petroleum Corporation and Sri Lanka Ports Authority.

A 10-year income tax holiday beginning 1 April 2011 is granted to the Sri Lankan Airlines and Mihin Lanka (a budget airline in Sri Lanka).

Profits and income (other than interest and dividends) of the Institute of Certified Management Accountants of Sri Lanka and the Child Protection Authority are exempt from income tax.

Unit trusts and mutual funds are taxed at a rate of 10% on their income. Income derived by unit trusts from investments in listed debentures and equity is exempt from income tax.

Income earned by resident companies or partnerships for services provided in or outside Sri Lanka to persons or partnerships outside Sri Lanka (other than commissions, discounts or similar receipts) is exempt from income tax if such income is remitted to Sri Lanka through a bank.

A three-year tax exemption is granted to new undertakings that are engaged in the manufacturing of articles other than liquor and tobacco and that have a minimum investment of Rs. 50 million before 31 March 2012.

A three-year tax exemption is granted to new undertakings that have a minimum investment of Rs. 50 million before 31 March 2015 and that are engaged in agriculture and/or agroprocessing, animal husbandry and/or processing, fisheries and/or fish processing, information technology, business or knowledge process outsourcing, healthcare, education, beauty care, cold room storage, tourism, sports and fitness centers and creative work including artwork.

A three-year tax holiday is granted to businesses providing manor houses or thematic bungalows to tourists.

A three-year tax holiday is granted to venture capital companies investing in ordinary shares of companies engaged in projects of a pioneering nature.

A five-year tax holiday is granted to new undertakings of companies engaged solely in R&D with an investment of more than Rs. 2 million.

A five-year tax holiday is granted to new undertakings that invest more than Rs. 50 million in the eastern provinces of Sri Lanka and that generate employment opportunities for more than 50 persons (businesses that qualify for this exemption will be specified).

A five-year tax holiday is granted for profits and income of cooperative societies.

A 7- or 10-year tax holiday is granted for income derived from the exhibition of cinematographic films in new cinemas or upgraded cinemas, respectively.

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 resident companies or partnerships for services provided in or outside Sri Lanka to persons or partnerships outside Sri Lanka (other than commissions, discounts or similar receipts) is exempt from income tax if such income is remitted to Sri Lanka through a bank.

For years of assessment beginning after 1 April 2009, half of the income of persons derived from the production of a drama for a period of one year from the date of the first public performance is exempt from tax.

Export development rebates paid to exporters by the Export Development Board of Sri Lanka under the Export Development Reward Scheme are exempt from income tax.

Profits and income derived from the sale after 1 April 2009 of Sri Lanka Development Bonds are exempt from income tax.

Profits and income derived by persons or partnerships from investments in Economic Resurgence Certificates with monies that were contained in an account approved by the Central Bank of Sri Lanka and that were deposited in such account after 1 February 2009 are exempt from income tax.

Income earned in foreign currency by resident companies from services rendered outside Sri Lanka for the carrying out of construction projects is exempt from income tax.

Income derived by nonresident companies outside Sri Lanka from the supply of plant, machinery or equipment to the government of Sri Lanka, public corporations or government institutions or from projects approved as essential for the economic development of Sri Lanka is exempt from income tax.

Income and profits derived by undertakings from the construction and sale of houses for low-income families with a floor area exceeding 500 square feet are exempt from income tax if the sale takes place before 1 April 2013.

Profits earned in foreign currency by consignors or consignees that are resident companies or partnerships from the export of goods that are not subject to any manufacturing process other than repacking or labeling are exempt from income tax.

Profits derived from sales of shares are exempt from income tax.

Profits derived from sales of foreign-currency sovereign bonds to nonresident persons or licensed commercial banks in Sri Lanka are exempt from income tax, effective from 21 October 2008.

Royalties received from outside Sri Lanka are exempt from income tax if remitted to Sri Lanka through a bank.

Profits and income from the redemption of units of unit trusts or mutual funds are exempt from income tax.

Profits and income from the administration of sports grounds, sports stadiums or sports complexes are exempt from income tax.

**Capital gains.** Capital gains tax is not imposed in Sri Lanka.

**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 final tax return must be submitted by 30 November 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 November, the statute of limitations for the issuance of an assessment expires 24 months from the statutory date of filing the return. For returns filed after 30 November, the statute of limitations expires four years after the statutory date of filing the return.

Separate sets of accounts must be maintained for different activities of a trade or business that are exempt or subject to tax at different tax rates.

An advance ruling system will be introduced for investors eligible for tax exemptions to ensure consistency in the application of provisions of the tax laws.

**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.
- 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 10% 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 33⅓% of the distributable profits and the total dividends distributed. The calculation of distributable profits is specified in the law.

The definition of dividends has been expanded to include scrip dividends.

**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 10% is imposed on interest payable to residents and nonresidents on corporate debt securities at the time of issuance of the security.
- 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  $\frac{1}{9}$ , 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.
- Interest accruing on funds invested in Sri Lanka Development Bonds and Reconstruction Bonds that are denominated in U.S dollars and issued by the Central Bank of Sri Lanka is exempt from income tax.
- Interest income on foreign-currency sovereign bonds paid to nonresident persons or licensed commercial banks in Sri Lanka is exempt from income tax.
- Interest accruing to persons or partnerships outside Sri Lanka on loans granted to persons or partnerships in Sri Lanka is exempt from income tax.
- Interest earned by banks or financial institutions on loans granted from Investment Fund Accounts (banks and financial institutions that are liable to value-added tax [VAT] on financial services must transfer specified amounts to Investment Fund Accounts) 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:

- 25% 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 relating to business and foreign training expenses can be claimed up to a maximum of 2% of the preceding year's statutory income.
- Debt-to-equity rules restrict the deduction of interest paid (see Section E).
- Hire or rental expenses included in traveling expenses are disallowed.
- The deduction for management fees is limited to Rs. 2 million or 1% of turnover, whichever is less.
- Listing expenses of a company are allowed up to a maximum of 1% of the value of the initial public offer.
- Tax borne on behalf of employees is disallowed.

Expenses with respect to vehicles provided to employees are deductible regardless of whether such vehicle benefits are taxable in the hands of the employees.

Local or foreign travel expenses incurred by companies exclusively providing services of design development, product development or product innovation are allowable expenses.

Maintenance or management expenses incurred by a company with respect to sports grounds, stadiums or sports complexes are allowable expenses.

Precommencement expenses incurred by new small-and-medium scale enterprises with expected turnover of less than Rs. 500 million are allowed as a deduction from statutory income in the year of commercial production.

Nation Building Levy (see Section D) paid is an allowable expense.

Research expenditure incurred by a company is allowed as a double deduction.

An enterprise that incurs research and development expenditure carried out through a government institution is eligible for a triple deduction.

**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 the Colombo and Gampaha districts and for investments in housing projects for shanty dwellers.

Qualifying payment deductions for donations to approved charities established for the provision of institutional care for the sick and needy are limited to Rs. 500,000 or one-fifth of the assessable income, whichever is less. Qualifying payment deductions for investments in the production of a film are restricted to Rs. 35 mil-

lion. Qualifying payment deductions for investments in companies located outside the Colombo and Gampaha districts are restricted to Rs. 100 million.

The investment of a minimum of Rs. 50 million by an existing enterprise in itself for expansion can be claimed as a qualifying payment subject to 25% of the investment being maintained for four years of assessment.

Expenses incurred under community development projects in the most difficult villages identified and published in the *Government Gazette* can be claimed as a qualifying payment, up to a maximum of Rs. 10 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 aggregate 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 2011.

Asset	Rate (%)
Buildings	6.67 (a)
Buildings constructed after 1 April 2011 for commercial use	10
Bridges, reservoirs, electricity and water distribution lines, toll roads	6.67
Plant and machinery or equipment	33.33
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
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)
High technology energy efficiency machinery and equipment	50

(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 be offset only against 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 following table summarizes other significant taxes.

Nature of tax	Rate
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	12%
Exports and international transportation	0%
VAT on financial services (VATFS); imposed on the supply of financial services by specified institutions carrying on the business of financial services; unit trusts and mutual funds are exempt	12%
Economic Service Charge (ESC); imposed on turnover; if the turnover exceeds Rs. 25 million per quarter, the maximum charge is Rs. 30 million per quarter; airlines and shipping lines, dealers in lottery, unit trusts, mutual funds, distributors (as defined in ESC Act) and proceeds from the sale of foreign-currency sovereign bonds are exempt from ESC; effective from 1 April 2012, ESC chargeable only on turnover of businesses that are benefiting from tax exemption or that are incurring losses	
BOI enterprises (liable to income tax), apparel exporters, BOI Trading Houses and manufacturers of textiles for apparel exporters	0.1%

Nature of tax	Rate
Companies exempt from income tax (including tax holiday companies) and those subject to concessionary tax rates, companies incurring losses and wholesale or retail traders (except distributors of motor vehicles or liquor)	0.25%
Primary conversion of tea, rubber or coconut	0.5%
Commercial operations of advertising agents Others (including dealers in motor vehicles and liquor)	1%
Nation Building Levy (NBT); imposed on manufacturers, importers and service providers and on wholesale or retail trading of goods that generate turnover per quarter of more than Rs. 500,000; threshold of Rs. 12.5 million per quarter for operation of hotels and similar businesses, local educational institutions, supply of labor (manpower) and local value-added agricultural, rice-based products; specific exemptions granted; levy is imposed on the entire amount of turnover if the amount of turnover exceeds the threshold	2%
Share transaction levy; on turnover from listed share transactions	0.3%
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
Telecommunication Levy	20%
Excise duty; on specified imports and locally manufactured products	5% to 115%
Import duty	2.5% to 28%
Cess on specified imported items	Various
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; imposed on declared Cost, Insurance, Freight (CIF) value of all cargo	5%
(Exports, the film industry, imports of goods for specified projects with foreign funds donations received by the government, imports of artificial limbs, crutches and similar items and yarns and fabrics are exempt.)	
Tourism Development Levy; imposed on turnover of tourist establishments	1%
Construction Industry Guarantee Fund Levy; imposed on the value of construction contracts that exceeds Rs. 15 million; levy	

Nature of tax	Rate
is imposed on the entire value if the value exceeds the threshold; approved special projects are exempt	0.25% to 1%
Special Commodity Levy	Various
Transfer tax; imposed 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.

Significant changes to exchange-control restrictions with regard to capital account transactions, which are effective from 22 November 2010, include the following:

- Foreign beneficiaries may invest in rupee-denominated debentures.
- Foreign companies may open places of business in Sri Lanka.
- Foreigners touring Sri Lanka or engaged in business in Sri Lanka may open foreign-currency accounts in Sri Lanka.
- Staff of foreign embassies may open foreign-currency accounts in Sri Lanka.

**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 (South)	10/15 (b)	10	10
Kuwait	10	10	20
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
Qatar	10	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	15	10	5/10 (h)
Vietnam	15	10	10
Nontreaty countries	10	10	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%.

Sri Lanka has also entered into agreements covering international air transport with the Hong Kong SAR, Oman, Saudi Arabia and the United Arab Emirates.

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## Swaziland

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### A. At a glance

Corporate Income Tax Rate (%)	30
Capital Gains Tax Rate (%)	0
Branch Tax Rate (%)	30
Withholding Tax (%) (a)	
Dividends	15 (b)
Interest	10
Royalties from Patents, Know-how, etc.	15
Management Charges	15
Nonresident Contractors and Professionals	15 (c)
Nonresident Entertainers and Sports Persons	15
Branch Remittance Tax	15 (d)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) For purposes of the withholding taxes, nonresident companies are companies that are neither registered nor incorporated in Swaziland.
- (b) This withholding tax applies to dividends paid to nonresidents. See Section B.
- (c) This withholding tax is imposed on the payment after deduction of direct costs of materials used in construction operations.
- (d) This tax is imposed on the deemed repatriated income of the branch of a nonresident company. However, for the branch of a company registered in Botswana, Lesotho, Mozambique, Namibia or South Africa, the rate of the tax is reduced to 12.5%.

### B. Taxes on corporate income and gains

**Corporate income tax.** Domestic and foreign companies are taxed on all income received or accrued from a source in Swaziland or deemed to be from a source in Swaziland.

**Rate of corporate tax.** The corporate tax rate is 30%.

**Administration.** The tax year runs from 1 July to 30 June. Corporate taxpayers may obtain permission to pay tax on a different fiscal year-end. Tax returns are due within 30 days after the notice

given by the Commissioner of Taxes. Taxpayers unable to submit returns within 30 days must apply for an extension and submit an estimate of their income for the year.

Companies must pay provisional tax based on their estimated annual tax liability in two installments during their financial year. The installments must be paid by the end of the sixth month of the financial year and by the end of the financial year. A third (“topping-up”) payment of any balance of tax due must be made within six months after the end of the financial year.

**Dividends.** Dividends paid to resident companies are exempt from tax. A 15% withholding tax is imposed on dividends paid to non-residents, including companies. The rate is reduced to 12.5% if the dividend is paid to a company incorporated or registered in the Southern African Customs Union (SACU; the SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland), provided the company is not a subsidiary or branch of a company incorporated or registered outside the SACU.

**Foreign tax relief.** No specific provisions for foreign tax relief exists, except under double tax agreements.

### C. Determination of trading income

**General.** Income tax is levied on all taxable income received by or accrued to any person from a source within Swaziland or deemed to be within Swaziland. Taxable income includes all income other than capital gains and losses and exempt income.

Expenses, other than those of a capital nature, incurred in Swaziland for the production of income may be deducted from income. Expenses incurred outside Swaziland in the production of income are deductible at the discretion of the Commissioner of Taxes.

Expenses specifically allowed include interest on business-related loans, repairs and maintenance, and bad and doubtful debts. In general, expenses that are not wholly or necessarily incurred in the production of income are not deductible.

**Inventories.** In general, inventories are valued using the last-in, first-out (LIFO), first-in, first-out (FIFO) or weighted-average methods.

**Provisions.** Provisions are not normally allowed as deductions in computing taxable income.

**Depreciation.** An annual depreciation allowance, calculated using a declining-balance method, is available for most capital expenditures. An annual depreciation allowance is also available for industrial buildings and hotels. The straight-line method may be used if prior permission is obtained from the Commissioner of Taxes.

An initial allowance of 50% is granted for investments in plant and machinery used in manufacturing, industrial buildings and hotels.

**Relief for trading losses.** Trading losses are deductible in the year sustained and may be carried forward without limitation. Losses may not be carried back.

## D. Sales tax

Sales tax is levied on the first sale of goods (imported or manufactured), services, hotel accommodations and restaurant meals. The tax rates are 14% of the taxable value for most items and 25% for liquor.

## E. Foreign-exchange controls

Foreign-exchange controls are not imposed within the Common Monetary Area, which includes Lesotho, South Africa and Swaziland. Transactions outside this area are regulated by the Central Bank of Swaziland in cooperation with authorized dealers. Residents outside the Common Monetary Area may open nonresident accounts.

Foreign-exchange controls are imposed on imports as well as on the repatriation of capital, profits, interest, royalties, fees and income of expatriate personnel. These transactions require prior approval from the Central Bank of Swaziland, but approval is generally granted.

## F. Treaty withholding tax rates

	Dividends %	Interest %	Royalties %	Management fees %
Mauritius	7.5	5	7.5	0
South Africa	10/15 (a)	10	10	10
United Kingdom	15	0	0	0
Nontreaty countries	15 (b)	10	15	15

(a) The 10% rate applies if the shareholder holds at least 25% of the capital. The 15% rate applies in all other cases.

(b) See Section B.

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### A. At a glance

Corporate Income Tax Rate (%)	26.3
Capital Gains Tax Rate (%)	26.3
Branch Tax Rate (%)	26.3
Withholding Tax (%)	
Dividends	30 (a)
Interest	0

Royalties from Patents, Know-how, etc.	0 (b)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) 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.
- (b) Royalties paid to nonresidents are not subject to withholding tax, but are taxed as Swedish-source income at the normal corporate rate of 26.3% 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*). 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 26.3%. No local income taxes are levied on corporate profits.

**Capital gains.** No separate regime 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*). Effective from 1 January 2010, the participation exemption regime has been expanded to cover interests in partnerships and shares held by partnerships. Corresponding losses on interests in partnerships are nondeductible. However, capital gains on interests in partnerships domiciled outside the European Economic Area (EEA) are not covered by the participation exemption.

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 2012 tax year covers financial years ending during 2011. A financial year may cover the following periods:

- 1 May to 30 April
- 1 July to 30 June
- 1 September to 31 August
- 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 be extended 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 15 June 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 2012 calendar year, advance tax payments are made during 2012, the tax return is filed by 2 May 2013, and any balance of tax due is paid in March 2014, 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.
- 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 an 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).
- 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.

Effective from 1 January 2010, partnerships may receive tax-exempt dividends to the extent that the dividends would be exempt if received directly by the owners of the partnership interests.

**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 back to taxable income no later than six years after the year of the deduction. The oldest remaining reserve must always be reversed first. The reserve is based on net income before tax and includes any amounts from the allocation reserve that are added back to taxable income.

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*) 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 company and taxable income for the receiving company. 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 an EEA state is treated as a Swedish company for purposes of the group contribution rules.

Effective from 1 July 2010, in certain circumstances it is possible for Swedish companies to claim deductions of losses in foreign subsidiaries.

#### D. Other significant taxes

The following table 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; paid by employer	
General rate (for 2011)	31.42
Rate for employees aged up to 26 (for 2011)	15.49
Pension contribution on salaries, wages and the assessed value of benefits in kind; paid by employee on amounts up to SEK 420,447 (for 2011)	7
Special salary tax, on earnings not included in the base for social security contributions; paid by the employer (for 2011)	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 14.47% (55% of the effective corporate income tax rate) 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 must 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.
- 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.
- 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. However, the Companies Act requires the compulsory liquidation of a company if more than 50% of the share capital is lost without replacement of new capital.

A Swedish company may not be allowed to deduct interest expenses on loans for intragroup acquisitions of shares and other share-based instruments unless certain conditions apply. The interest expenses are deductible if the interest income related to the loan is taxable at a rate of 10% in the hands of the beneficial owner of the interest income or if the intragroup acquisition and

the debt related to the interest expenses are motivated predominantly by business reasons. To determine whether the rate is 10%, the interest income is considered on a stand-alone basis; that is, as if the interest income is the only income recognized by the beneficial owner.

## 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 for dividends and royalties only. However, under Swedish domestic law, no dividend withholding tax is levied on dividends paid by a Swedish company to a foreign company that is equivalent to a Swedish company. A foreign company is considered equivalent to a Swedish company if the company is resident and liable for income tax in a country with which Sweden has entered into a tax treaty, provided that the taxation is not limited to certain income and that the entity is covered by the provisions of the tax treaty.

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
Faroe 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
Ireland	15	5	0	—
Israel	15	5	28	0
Italy	15	10	5	—
Jamaica	22.5	10	10	—
Japan	15	5 (c)	10	—

Residence of recipient	Dividends		Royalties (a)	
	Normal treaty rate %	Reduced rate (b)(d) %	Normal treaty rate %	Reduced rate %
Kazakhstan	15	5	10	—
Kenya	25	15	20	—
Korea (South)	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	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 tax rate of 26.3%. However, under certain treaties, the tax rate 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 also applies if the recipient fulfills the conditions in Article 2 of the EC Parent-Subsidiary Directive and if the holding is at least 10% 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, Montenegro, Serbia and Slovenia. Sweden has entered into a tax treaty with Macedonia. The withholding rates under the Macedonia treaty are listed in the table.

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## A. At a glance

Corporate Income Tax Rate (%)	12 to 25 (a)
Capital Gains Tax Rate (%)	– (b)
Branch Tax Rate (%)	12 to 25 (a)
Withholding Tax (%) (c)	
Dividends	35
Interest	0/35 (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) Income of the current year may be offset against losses incurred in the preceding 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* 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% to 25%, 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
- 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. Incentives at the federal level are governed by the federal law on regional policy. The following are the criteria for granting federal incentives:

- Establishment of new business activities in a qualifying area of economic development
- The performance by the applying company of industrial activities or services that have a close nexus to production activities
- Creation of new jobs either directly or indirectly (through its suppliers and/or partners) or preservation of existing long-term jobs in a changing business environment

- Particular economic relevance of the planned project for the area

The federation and the cantons grant partial or full tax holidays.

**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. Under the participation exemption rules for capital gains, the parent company must sell a shareholding of at least 10% and, at the time of the disposal, it must have held the shares for at least one year (for further details regarding the participation exemption, see *Dividends*).

**Administration.** Income tax is generally assessed on the income for the current fiscal year, which corresponds to the corporation's financial year. The financial year need not correspond with the calendar year. Corporations are required to close their books once a year and file annual returns. This rule does not apply to the founding year. Consequently, the first fiscal year can be extended up to a maximum of nearly two years.

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 fiscal 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, the federal tax liability is reduced by a proportion of dividend income (as defined by the law) to the total taxable income if the recipient of dividends satisfies any of the following conditions:

- The recipient owns at least 10% of the shares of the distributing corporation.
- The recipient has a share of at least 10% of the profits and reserves of the distributing corporation.
- The recipient holds shares with a market value of at least CHF 1 million.

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 or proceeds from liquidation exceeding the nominal share capital are generally required to withhold tax at a rate of 35%. Under the capital contribution principle, which entered into force on 1 January 2011, contributions to equity made on or after 31 December 1996 can be distributed without triggering withholding tax consequences, provided

certain requirements are met. 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, as well as a notification form no later than 30 days after the due date of the dividend.

**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*.

### 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT), on deliveries of goods and services, including imports of goods and the purchase of services and (in very specific cases) of goods from foreign businesses that are not registered for VAT in Switzerland	
Standard rate	8
Hotel and lodging services (overnight stays only)	3.8
Preferential rate (applicable to items such as foodstuffs, farming supplies, agricultural products, medicines and newspapers)	2.5
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); the cantons can provide that the corporate income tax can be credited against the cantonal/communal equity tax	0.001 to 0.525
Payroll taxes	
Social security contributions, on gross salary; paid by	
Employer	5.15
Employee	5.15
Company pension fund; rate varies by plan (compulsory and optional), gender and age of employee; paid by	

Nature of tax	Rate (%)
Employer (must bear at least one-half of the contribution)	3.5 to 9
Employee	3.5 to 9
Unemployment insurance, imposed on annual gross salary	
Gross salary up to CHF 126,000; paid by	
Employer	1.1
Employee	1.1
Gross salary between CHF 126,001 and CHF 315,000; paid by	
Employer	Additional 0.5
Employee	Additional 0.5
Family allowance; paid on salary by employer; imposed by various cantons at different rates	0.1 to 4
Maternity insurance (only for some cantons)	Various
Accident insurance; rates vary depending on extent of coverage and the risk of the business; imposed on annual gross salary of up to CHF 126,000	
Occupational; paid by employer; for extremely high risks, rates vary depending on various factors (for example, industrial sector of the employer)	Various
Nonoccupational; employer may elect to charge all or part of these premiums to employees; for extremely high risks, rates vary depending on various factors (for example, industrial sector of the employer)	Various
Stamp duties	
One-time capital contribution tax, on Swiss shares (the rate is 0% for shares issued within the scope of qualified mergers and reorganizations, as well as for financial reorganizations, provided specific requirements are met); for incorporations and capital increases, the first CHF 1 million is exempt from tax	1
(A proposal in the third corporate tax reform that is under discussion would eliminate the one-time capital contribution tax.)	
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 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 for principal companies (see *Principal companies*) 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 (10% of the share capital, 10% of the profit and reserves or fair market value of CHF 1 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 (see Section B).

Currently, holding companies are prohibited from performing any commercial activities in Switzerland (this implies that they could do so abroad; however, this is rare).

**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. Switzerland applies the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. However, for the provision of financial and management services the cost-plus method is accepted in exceptional cases only. 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*).

**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
- 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 of 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 which are also applied by most cantons, 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%
- Intangibles: 70%

The required equity is calculated at the end of the year based on the balance sheet or on the fair market value of all assets, if higher.

For finance companies, the maximum indebtedness is 6/7 of the assets.

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 guidelines. In particular, cost-plus charges should be justified and documented with appropriate ranges of mark-ups for each individual case. For the provision of financial and management services, the cost-plus method is accepted in exceptional cases only.

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. Rulings are more common.

**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.
- Assets and liabilities are transferred and acquired at their previous value for income tax purposes.

**Double tax treaties.** Switzerland has entered into more than 90 treaties for the avoidance of double taxation. The treaties generally follow the OECD model treaty.

In 1962, the federal council issued an antiabuse decree (BRB 62) 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. The BRB 62 regulations were substantially loosened by a circular letter in 1999 and amendments in 2001. This circular letter substantially relaxed the restrictions for the following companies:

- 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
- 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

If a company that remains subject to the antiabuse decree receives dividends, interest or royalties from sources in a country having a double tax treaty with Switzerland and if foreign withholding tax is reduced as a result of the applicable tax treaty, no more than 50% of this income may be diverted to persons outside Switzerland.

The Federal Tax Administration published another circular letter on 1 August 2010 with respect to BRB 62 and the changes made in 1999 and 2001. This circular letter further relaxed the antiabuse decree. It provides that, as of 1 August 2010, the antiabuse regulations set forth in the new double tax treaties (including the

extended administrative assistance clause in accordance with Article 26 of the OECD Model Convention) supersede the regulations set forth in BRB 62 and the amendments of 1999 and 2001. For all treaties without antiabuse clauses, BRB 62 remains applicable. The 2010 circular letter also states that the following Swiss companies (in addition to the ones already specified in 1999 and 2001) are considered engaged in active business and therefore are no longer subject to the restrictions imposed in 1962:

- Finance companies if their activities are conducted by highly qualified employees and a real value-added is generated. The actual activities carried out and the risks assumed are relevant rather than the number of employees.
- Intellectual property (IP) companies. The same factors as mentioned above for finance companies are taken into account.
- Holding companies with a participation of at least 10% in the affiliate.

For further relief, the personnel of another Swiss group company may be considered when determining whether a company is active.

**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.
- Neither company is tax resident in a third state under a double tax treaty with that state.

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 following jurisdictions:

- Guadeloupe, Guyana, Martinique and Reunion (France)
- Gibraltar (United Kingdom)
- Azores and Madeira (Portugal)
- Canary Islands (Spain)

The Switzerland-EU agreement will be extended to other territories that join the EU in the future.

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 completion of the two-year minimum holding period requires filing and approval of Form 70 after the completion of the two-year holding period.

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 withholding tax at a rate of 35% (effective from 1 July 2011). The Switzerland-EU agreement allows foreign bank customers to choose between the 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 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.

Residence of recipient	Dividends %	Interest (a) %	Royalties (b) %
Albania	5 (d)	5	0
Algeria	5 (o)	10	0
Argentina	10 (d)	12	0
Armenia	5 (mm)	10	0
Australia	15	10	0
Austria	0 (t)(gg)	0 (gg)	0
Azerbaijan	5 (jj)	0/5/10 (kk)	0
Bangladesh	10 (t)	0/10 (uu)	0
Belarus	5 (d)	8 (k)	0
Belgium	10 (d)(gg)	10 (gg)	0
Bulgaria	5 (d)(gg)	10 (gg)	0
Canada	0/5 (f)(xx)	0/10 (yy)	0
Chile	15	5/15 (vv)	0
China (w)	10	10	0
Colombia	0 (t)	10	0
Côte d'Ivoire	15	15	0
Croatia	5 (d)	5	0
Cyprus (nn)	0	0	0
Czech Republic	5 (d)(gg)	0 (gg)	0
Denmark (rr)	0 (h)(gg)	0 (gg)	0
Ecuador	15	10	0
Egypt	5 (d)	15	0
Estonia	5 (dd)(gg)	10 (gg)	0
Faroe Islands (rr)	0	0	0
Finland	0 (gg)(oo)	0 (gg)	0
France	0 (e)(gg)	0 (gg)	0
Georgia	0 (oo)	0	0
Germany	0 (j)(gg)	0 (gg)	0
Ghana	5 (g)	0/10 (ll)	0
Greece (q)	0/5 (d)(gg)(zz)	7 (gg)	0
Hungary	10 (gg)	10 (gg)	0
Iceland	5 (d)	0	0
India (ss)	10	10	0
Indonesia	10 (d)	10	0
Iran	5 (i)	10 (n)	0
Ireland	0 (gg)	0 (gg)	0
Israel	5 (g)	10 (k)	0
Italy	15 (gg)	12.5 (gg)	0

Residence of recipient	Dividends	Interest (a)	Royalties (b)
	%	%	%
Jamaica	10 (s)	10	0
Japan	0/5 (ww)	0/10 (ff)	0
Kazakhstan (qq)	5 (bb)	10	0
Korea (South) (qq)	10 (d)(ii)	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)	0/10 (gg)	0
Macedonia	5 (d)	10 (cc)	0
Malaysia	5 (d)	10	0
Malta (nn)	0	0	0
Mexico (qq)	0 (bb)	10 (p)	0
Moldova	5 (d)	10	0
Mongolia	5 (d)	10	0
Montenegro	5 (t)	10	0
Morocco	7 (d)	10	0
Netherlands	0 (h)(gg)	0 (gg)	0
New Zealand	15	10	0
Norway	0 (y)	0	0
Pakistan	10 (ee)	10	0
Philippines	10 (y)	10	0
Poland	0 (gg)(tt)	10 (c)(gg)	0
Portugal (x)	10 (d)(gg)	10 (gg)	0
Qatar	5 (pp)	0	0
Romania (qq)	10 (gg)	10 (gg)	0
Russian Federation (qq)	5 (t)	10 (k)	0
Serbia	5 (t)	10	0
Singapore (qq)	10 (d)	10	0
Slovak Republic (qq)	5 (d)(gg)	10 (gg)	0
Slovenia	5 (d)(gg)	5 (gg)	0
South Africa	5 (o)	5	0
Spain (qq)	0 (gg)(hh)	0 (gg)	0
Sri Lanka	10 (d)	10 (k)	0
Sweden (qq)	0 (d)(gg)	5 (gg)	0
Taiwan	10 (t)	0/10 (n)	0
Tajikistan	5 (o)	0/10 (n)	0
Thailand	10 (y)	0/10/15 (u)	0
Trinidad and Tobago	10 (l)	10	0
Tunisia	10	10	0
Ukraine	5 (o)	0/10 (n)	0
United Kingdom	0 (h)(gg)	0 (gg)	0
United States (qq)	5 (g)	0	0
Uruguay	5 (d)	0/10 (ll)	0
Uzbekistan	5 (o)	0/5 (r)	0
Venezuela	0 (z)	0/5 (aa)	0
Vietnam	7 (v)	10	0
Nontreaty countries	35	0/35	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) A 5% general rate and a 0% rate on interest paid between related parties apply to interest paid on or after 1 July 2013.
- (d) This rate applies if the shareholding by a corporation is at least 25%. A 15% rate applies to all other dividends.
- (e) The renegotiated treaty entered into force on 4 November 2010. 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 in the contracting states unless the corporate recipient demonstrates that the participation rights are not solely intended to profit from the advantages mentioned above. The 15% rate also applies to dividends paid to individuals and all other dividends.
- (f) The 5% rate applies to dividends paid to corporations with a shareholding and voting stock of at least 10% in the payer. A 15% rate applies to other dividends.
- (g) The 5% rate applies to dividends paid to corporations with a shareholding of at least 10% in the payer. A 15% rate applies to other dividends.
- (h) This rate applies to dividends paid to corporations holding at least 10% of the capital and to dividends paid to pension funds or other similar institutions providing pension schemes. A 15% rate applies to other 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 10% and if the participation has been held for at least one year. A 15% rate applies if the recipient of the dividends is a corporation that has a shareholding of less than 10% 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) The 0% rate applies to the following interest payments:
- Interest paid to the other contracting state in connection with the sale on credit of industrial, commercial or scientific equipment
  - Interest paid in connection with the sale on credit of merchandise by one enterprise to another enterprise
  - Interest on a loan granted by a bank or to the other contracting state or a political subdivision or a local authority thereof
- (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 5%.
- (q) The 0% rate applies to dividends paid to corporations with direct ownership of at least 10% and a holding period of two years and to dividends paid to pension funds or other similar institutions. A 5% rate applies to corporations with direct ownership of at least 10% before the two-year holding period has elapsed. A 15% rate applies in all other cases.
- (r) The 0% rate applies to the following interest payments:
- Interest paid with respect to a loan made, guaranteed or insured by the government of the other state or an instrumentality or agency thereof
  - Interest paid in connection with the sale on credit of industrial, commercial or scientific equipment
  - Interest paid in connection with the sale on credit of merchandise by one enterprise to another enterprise
  - Interest on a loan granted by a bank
- (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 the Hong Kong SAR.
- (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 direct shareholding of the corporate 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%. A 15% rate applies to all other dividends.
- (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 10% rate applies to dividends paid to corporations holding participations of at least 20% in other enterprises. A 20% rate applies to other dividends.
- (ff) The 0% rate applies to the following interest payments:
- Interest paid to a contracting state or a political subdivision or local authority thereof
  - Interest paid to the central bank of the other contracting state or any institution owned by the government
  - Interest paid to a bank, insurance company, securities dealer or pension fund or scheme
- (gg) A 0% rate may apply under the Switzerland-EU agreement (see the paragraph preceding the treaty withholding tax rate table). 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) On 28 December 2010, Switzerland and Korea (South) signed a revised tax treaty, which provides lower withholding tax rates.
- (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.
- (ll) The 0% rate applies to the following interest payments:
- Interest paid in connection with the sale on credit of industrial, commercial or scientific equipment
  - Interest paid on the sale of goods between corporate entities
  - Interest paid on certain bank loans
- A 10% rate applies to all other interest payments.
- (mm) The 5% rate applies if, at the time the dividends become due, the corporate recipient of the dividends holds a shareholding of at least 25% in the distributing entity and the value of the participation is at least CHF\$200,000 (or the equivalent in foreign currency). The treaty withholding tax rate is 15% if these conditions are not met.
- (nn) No treaty is in force. However, the Swiss-EU Savings Tax Agreement is available.
- (oo) The 0% rate generally applies if the shareholding of a corporate recipient of dividends is at least 10%. The rate is increased to 10% if the shareholding of a corporate recipient is less than 10%.
- (pp) A 0% rate applies to dividends paid to the other contracting state or a political subdivision or local authority thereof, the central bank or pension funds. The 5% rate applies to dividends paid to corporate recipients if the shareholding is at least 10%. A 10% rate applies if the recipient is an individual with a shareholding of at least 10%. For other dividends, the rate is 15%.
- (qq) These treaties have been renegotiated and signed and will enter into force on 1 January of the year following the year of the notifications of each contracting state. It appears that these treaties will not enter into force before 1 January 2013.
- (rr) The treaty between Denmark and Switzerland was extended to the Faroe Islands as of 22 September 2009. The extension and the revised protocol between Denmark and Switzerland entered into force in November 2010.
- (ss) On 10 October 2011, an amending protocol entered into force. The protocol did not change the withholding tax rates. However, if after the date of signing of the amending protocol, India and a third state that is an OECD

member sign a convention, agreement or protocol and if under this convention, agreement or protocol, India limits its taxation at source of dividends, interest, royalties or fees for technical services to a rate lower than the rate provided for in the double tax treaty between Switzerland and India, the lower rate will also apply under the double tax treaty between Switzerland and India, effective from the date on which such convention, agreement or protocol enters into force.

- (tt) The 0% rate applies if the dividends are paid to corporations with a shareholding of at least 10% in the capital of the payer and the shareholding is held for at least two years or if the dividends are paid to pension funds or similar institutions. A 15% rate applies in all other cases.
- (uu) The 0% rate applies to interest paid to the other contracting state or certain government agencies of the contracting state or in connection with financing transactions, the purchase of industrial, commercial or scientific equipment or the construction of industrial, commercial, scientific or public facilities on credit. The 10% rate applies to all other interest.
- (vv) The 5% rate applies to interest paid on bank and insurance loans, on bonds and other securities that are traded on a stock exchange and in certain other special transactions. The 15% rate applies to all other interest payments.
- (ww) The 0% rate applies to dividends if the beneficial owner is a resident of the other contracting state and is either of the following:
- A company that has owned directly or indirectly for at least six months shares representing at least 50% of the capital or voting power of the company paying the dividends
  - A pension fund or scheme
- The 5% rate applies to corporate recipients if the direct or indirect shareholding represents at least 10% of the capital or voting power and if the participation has been held for six months. A 10% rate applies to all other dividends.
- (xx) The 0% rate applies to dividends that are paid to the Bank of Canada or qualifying pension schemes.
- (yy) The 0% rate applies to interest payments if the beneficial owner of the interest is a resident of Canada and is not related to the payer.
- (zz) The 0% rate applies if the beneficial owner of the dividends is the other contracting state, a political subdivision or a local authority of the other contracting state or a pension fund or scheme.

Double tax treaties with the Hong Kong SAR, Turkey and the United Arab Emirates have been signed, but have not yet entered into force. Switzerland had never entered into double tax treaties with these countries. As of the time of writing, Switzerland had initialed but not signed new double tax treaties with Bulgaria, the Czech Republic, Ireland, Oman, Peru and Portugal.

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**A. At a glance**

Corporate Income Tax Rate (%)	17 (a)
Capital Gains Tax Rate (%)	17 (a)(b)
Branch Tax Rate (%)	17 (a)
Withholding Tax (%)	
Dividends	
Paid to Residents	0
Paid to Nonresident Corporations and Individuals	20 (c)
Interest	
Paid to Resident Corporations	10 (d)
Paid to Resident Individuals	10 (e)
Paid to Nonresident Corporations and Individuals	15/20 (f)
Royalties	
Paid to Resident Corporations and Individuals	10 (g)
Paid to Nonresident Corporations and Individuals	20
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	10

(a) For details, see Section B.

(b) Effective from 1 January 1990, income from securities transactions is not subject to income tax.

(c) For details and the definition of a nonresident corporation, see Section B.

(d) Payments in connection with securities issued under the Financial Asset Securitization Act or Real Estate Securitization Act and interest derived from short-term commercial paper are subject to a 10% withholding tax. In addition, they are included in the computation of the resident corporation's taxable income and are taxed at a rate of 17%.

(e) Interest arising from short-term commercial paper, asset-backed securities, bonds, structured products and repurchase agreements underlying such financial instruments is not included in the tax computation in a resident individual's tax return but is subject to a 10% withholding tax.

(f) The applicable tax rate for interest arising from short-term commercial paper, asset-backed securities, bonds, structured products and interest arising from repurchase agreements is 15%. Other types of interest are subject to a tax rate of 20%.

(g) The withholding of tax is not required if the licensor issues a Government Uniform Invoice (GUI).

**B. Taxes on corporate income and gains**

**Corporate income tax.** A domestic profit-seeking enterprise is subject to corporate income tax on all of its income regardless of source. All profit-seeking enterprises, including subsidiaries of foreign companies that are incorporated under the Company Law of Taiwan, are considered domestic profit-seeking enterprises. A foreign profit-seeking enterprise is subject to tax only on income sourced in Taiwan.

**Tax rates.** For 2012, the taxing threshold for taxable income is NT\$120,000, and the total net income exceeding NT\$120,000 is subject to corporate income tax at a rate of 17%. However, the income tax payable may not exceed one-half of the taxable income minus the NT\$120,000 threshold amount.

**Alternative minimum tax.** The alternative minimum tax (AMT) applies to domestic profit-seeking enterprises and foreign profit-

seeking enterprises that have a fixed place of business or business agent in Taiwan, if the enterprise's base income exceeds NT\$2 million. The 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
- Tax-exempt income of offshore banking units

If the regular income tax equals or exceeds the AMT, only the regular income tax is payable. The regular income tax equals tax payable calculated under the Income Tax Law, less tax credits. If the regular income tax is less than the AMT, the difference between regular income tax and the AMT is payable in addition to the regular income tax. The additional tax payment cannot be offset by tax credits.

**Tax incentives.** A new Statute for Industry Innovation (SII) was announced and published on 12 May 2010 to replace the old Statute for Upgrading Industries (SUI), which expired on 31 December 2009. In comparison to the SUI, the SII retains only the tax incentive for expenditure spent on research and development (R&D) activities and offers other nontax subsidies for various qualified activities. Under the SII, enterprises may claim up to 15% of their R&D expenditures as a credit to offset against their corporate income tax payable in the current year only, with a maximum credit of 30% of the tax payable. The unused R&D tax credits obtained under the SII cannot be carried over to the future years. The SII is effective from 1 January 2010 through 31 December 2019. The tax incentives obtained before the expiration of SUI remain effective after the expiration of SUI.

**Capital gains.** Effective from 1 January 1990, income from securities transactions is not subject to income tax. A securities transaction tax of 0.3% or 0.1% is imposed based on the transaction value.

During the period of 1 January 2010 through 31 December 2016, trading in corporate bonds and financial bonds (as defined in the Banking Law of Taiwan) is exempt from securities transaction tax. The suspension of income tax on securities transactions applies only to securities issued and certified in accordance with the law of Taiwan. Gains derived from disposals of securities that are not issued or certified in accordance with Taiwan regulations are subject to income tax.

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 not available.

In general, the late filing penalty is 10% of the tax due. It may not exceed NT\$30,000 or be less than NT\$1,500. A delinquent

reporting surcharge is 20% of the tax assessed by the authorities. It may not exceed NT\$90,000 or be less than NT\$4,500. A taxpayer that fails to pay the tax within the prescribed time limit is subject to a surcharge for delinquent payment and interest on a daily basis at the prevailing interest rate provided by the Directorate General of Postal Remittances and Savings Bank (PRSB). Underreporting of taxable income is subject to a penalty of up to two times the underpayment of tax. In the event of a failure to file the annual income tax return after expiration of the prescribed period, the tax authorities may make a provisional assessment of the amount of income and tax payable on the basis of available tax data or the profit standard of the same trade. In the event that other tax information is subsequently obtained by the tax authorities, the taxpayer is subject to a penalty of up to three times the tax shortfall, in addition to the delinquent reporting surcharge.

During the month of September, a profit-seeking enterprise (excluding a sole proprietor, partnership, prescribed small-size enterprise or tax-exempted entity) 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.** Effective from 1 January 2010, the dividend withholding tax rate is 20% for nonresident corporations or nonresident individuals, regardless of whether the investments are approved by the Taiwan 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.

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. Resident individuals who receive dividends from resident companies must 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 Taiwan. 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). Cash refunds for excess credits are granted to shareholders who are resident individuals.

Companies must maintain an imputation credit account and calculate the imputation credits that are allocated to shareholders. These accounts are designed to limit the credit to the amount of corporate income tax and surtax paid in Taiwan. The total tax credit available is determined by multiplying the dividends received by the ratio of total tax paid at the corporate level to accumulated retained earnings since 1998.

Dividends received by resident companies from other resident companies are exempt from corporate income tax. However, imputation credits cannot be used by resident companies and must be passed on to individual shareholders. 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 Taiwan 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 Taiwan's 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 guidance for determining deductible business expenses. Transactions must conform to regular business practice; otherwise, tax authorities may assess tax based on standard profit margins derived from industry statistics.

If the income of a company consists of both taxable income and exempt income, the costs, expenses or losses, except for those that are attributable to the taxable income and exempt income in a direct, reasonable and definite way, must be allocated to taxable income and exempt income based on certain permitted methods.

**Tax exemptions.** A foreign enterprise engaging in international transportation that derives income in Taiwan 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 Taiwan international transportation enterprises operating in the foreign country.

Income derived by profit-seeking enterprises or individuals from the sale of land is exempt from income tax.

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 licensed rights are used to introduce new production technology or products, improve product quality or reduce production cost. In addition, service fees received by a foreign enterprise for rendering technical services in the construction of a factory for an emerging strategic important enterprise (ESIE) and royalties for the licensing of know-how to the ESIE may also be exempt from tax on approval. Tax exemption treatment for royalties for the licensing of know-how or technical service fees for the construction of a factory for an ESIE applies only to licenses or service contracts signed by 31 December 2010.

A foreign-based corporate taxpayer that is engaged in international transportation, construction contracting, technical service provision, or machinery and equipment leasing may apply to use a

deemed-profit-rate method (15% in general, and 10% for international transportation business) in determining its taxable income in Taiwan if it is difficult to calculate the costs and expenses arising from the conduct of the business in Taiwan.

Interest received by a foreign financial institution for offering financing facilities to its Taiwan branch offices or other financial institutions in Taiwan 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 Taiwan 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), weighted average, moving average, or any other method prescribed by the competent authority may be used. However, the use of two different cost methods in one fiscal year is not allowed.

**Provisions.** Provisions for a retirement fund approved by the authorities are deductible in amounts up to 15% of the 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.

**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, fixed percentage on diminishing book value method, working-hour method, sum-of-the-years'-digits method or production-unit 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.

<b>Assets</b>	<b>Years</b>
Commercial buildings	10 to 50
Industrial buildings	5 to 35
Office equipment	3 to 5
Motor vehicles	3 to 18
Plant and machinery	2 to 20

Companies may use the accelerated depreciation method if they meet certain criteria.

Depletion of assets in the form of irreplaceable resources can be computed either based on the production units or methods provided by the Table of Depletion Assets promulgated by the Ministry of Finance. This method must be applied consistently from year to year. In addition, a taxpayer may claim an amortization deduction for intangibles and organizational expenses. Business rights (for example, commercial rights for operating public utility, telephone, public transportation, shipping and air transportation businesses) and copyrights are amortized over 10 years 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 expenditures incurred during the period from the planning phase to the first year in which significant revenue is generated from the main business activities must be expensed on occurrence.

**Relief for losses.** If certain requirements are met, companies may carry forward for up to 10 years losses that have been approved by the tax authorities and not yet expired (that is, losses from 2003 and thereafter can be carried forward). The carryforward period was 5 years before the amendment of the law in 2009, which extended the carryforward period to 10 years. Consequently, losses that were incurred in 2003 or thereafter and that have not expired under the prior law can now be carried forward for up to 10 years from the year in which they were incurred. Loss carry-backs 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 Taiwan for at least 12 months 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 at least 12 months 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 (%)
Value-added tax, on sales and services	5
Business tax for financial industry	1/2/5
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 insured salary up to NT\$43,900; paid by	
Employer	5.25
Employee	1.5
Occupational injury insurance; payable by employer on insured salaries	0.07 to 2.99

Nature of tax	Rate (%)
National health insurance plan, on monthly insured salary up to NT\$182,000; paid by	
Employer	5.273
Employee	1.365 to 1.551

## 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
- 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.

**Debt-to-equity rules.** On 26 January 2011, the President of Taiwan announced the thin-capitalization rule enacted into Article 43-2 of the Income Tax Act. On 22 June 2011, the Ministry of Finance announced the enforcement rules for the thin-capitalization rule. The enforcement rules contain a debt-to-equity ratio of 3:1 (excluding companies in the financial industries). Interest on the excess portion of loans is not deductible. The enforcement rules do not apply to enterprises satisfying any of the following conditions:

- Total net current annual operating income and nonoperating income is less than NT\$30,000,000.
- Total annual interest expenses and total interest expenses derived from intercompany loans in the current year are both less than NT\$4 million.
- Before including the interest expenses in the taxable income calculation, the current year's taxable income is negative and such tax losses are not eligible for the tax loss carryforward regime under Article 39 of the Income Tax Act.

**Controlled foreign companies.** Taiwan does not currently have a controlled foreign company (CFC) measure. Income derived by foreign subsidiaries of Taiwan companies is not subject to Taiwan income tax until it is repatriated to Taiwan in the form of dividends. However, the Taiwan government is considering the introduction of a CFC regime. Under the draft bill currently under review by the Legislative Yuan, a nonresident company is considered a CFC if it is 50%-or-more owned by a Taiwan resident company or individual. A resident company or individual that holds an interest of 50% or more in a CFC is taxed on the company or individual's share of the profits of the CFC, regardless of whether a dividend has been declared.

**Antiavoidance legislation.** The Taiwan tax laws contain rules that deal with tax evasion and tax avoidance. The general rule is that the tax authorities may ignore transactions that constitute an abuse of the law and assess taxes with respect to each transacting party

based on the economic substance of the transactions as well as on the attribution of the economic benefits. The same rule applies to sham transactions designed to conceal the economic reality of the transaction.

**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

Taiwan has entered into double tax treaties with the countries listed in the table below.

Taiwan has entered into international transportation income tax agreements with Canada, the European Union, Germany, Israel, Japan, Korea (South), Luxembourg, the Macau SAR, the Netherlands, Norway, Sweden, Thailand and the United States.

The following table lists the withholding tax rates under Taiwan'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
France	10	10	10
Gambia	10	10	10
Hungary	10	10	10
India (h)	12.5	10	10
Indonesia	10	10	10
Israel	10	7/10 (e)	10
Macedonia	10	10	10
Malaysia	12.5	10	10
Netherlands	10	10	10
New Zealand	15	10	10
Paraguay	5	10	10
Senegal	10	15	12.5
Singapore	– (b)	– (f)	15
Slovak Republic (i)	10	10	5/10 (g)
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 (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 20% rate applies to dividends paid to nonresident corporations and nonresident individuals, effective from 1 January 2010 (see Section B).
- (e) The 7% rate applies to interest on bank loans. The 10% rate applies in all other cases.
- (f) The Singapore treaty does not provide a preferential withholding tax rate for interest payments.
- (g) The 5% rate applies to the royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
- (h) This treaty is effective for income derived from Taiwan on or after 1 January 2011. It is effective for income derived from India on or after 1 April 2012.
- (i) This treaty is effective from 1 January 2012.

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**A. At a glance**

Corporate Income Tax Rate (%)	30 (a)
Capital Gains Tax Rate (%)	30 (b)
Branch Tax Rate (%)	30
Withholding Tax (%)	
Dividends	5/10 (c)
Interest	10 (d)
Royalties	15 (e)
Management and Professional Fees (Services Fees)	5/15 (f)
Insurance Premiums	5 (g)
Rent, Premiums and Similar Consideration	10/15 (h)
Natural Resources Payments	15 (e)
Branch Remittance Tax	10 (i)
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) The corporate income tax rate is reduced to 25% for three years for companies that are newly listed on the Dar es Salaam Stock Exchange and that issue at least 30% of their share capital to Tanzanian nationals. Companies reporting tax losses for three consecutive years or more as a result of tax incentives for investments must pay alternative minimum tax at a rate of 0.3% on annual turnover beginning with the third year of consecutive losses.
- (b) Capital gains are treated as business income for companies and are taxed at the regular corporate income tax rate.
- (c) The 10% rate is the general rate for dividends paid by unlisted companies to residents and 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.
- (d) 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.
- (e) This withholding tax applies to both residents and nonresidents. It is a final tax for nonresidents only.
- (f) 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.
- (g) This tax applies to nonresidents only.
- (h) 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.
- (i) 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.
- 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%.

The corporate income tax rate is reduced from 30% to 25% for companies that are newly listed on the Dar es Salaam Stock Exchange and that issue at least 30% of their share capital to Tanzanian nationals.

**Alternative minimum tax.** Companies reporting tax losses for three consecutive years or more as a result of tax incentives for investments must pay alternative minimum tax at a rate of 0.3% on annual turnover beginning with the third year of consecutive losses.

**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
- Exemption from customs duty on capital goods

Companies operating in the Export Processing Zone (EPZ) are exempt from corporate tax for the first 10 years. They are also exempt from withholding tax on dividends, interest and rental payments.

**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 plus 5%, 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.

Class	Assets	Rate
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%

Class	Assets	Rate
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	$1/\text{useful life}$
8	Plant and machinery, including windmills, electric generators and distribution equipment used in agriculture	100%

Depreciation of assets in Classes 1, 2 and 3 is computed using the declining-balance method. Depreciation of assets in Classes 4, 5, 6, 7 and 8 is computed 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 following table summarizes other significant taxes.

Nature of tax	Rate (%)
Value-added tax (VAT)	18
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**

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
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
South Africa	10	10	10
Sweden	10	15	20
Nontreaty countries	20	15	20

The East African countries, which are Burundi, Kenya, Rwanda, Tanzania and Uganda, have concluded a tax treaty that is now awaiting ratification.

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**A. At a glance**

Corporate Income Tax Rate (%)	23 (a)(b)
Capital Gains Tax Rate (%)	23 (b)
Branch Tax Rate (%)	23 (b)
Withholding Tax (%)	
Dividends	10
Interest	15 (c)
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) The tax rate is reduced from 30% to 23% for the accounting period beginning on or after 1 January 2012. It will be further reduced to 20% for two consecutive accounting periods beginning on or after 1 January 2013 (that is, 2013 and 2014).  
 (c) 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 23% on taxable profits. The tax rate is reduced from 30% to 23% for the accounting period beginning on or after 1 January 2012. It will be further reduced to 20% for two consecutive accounting periods beginning on or after 1 January 2013 (that is, 2013 and 2014).

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
- 20% for a specified period on the first THB 20 million of annual profit for companies listed on the Market for Alternative Investment
- 25% for a specified period on the first THB 300 million of annual profit for companies listed on the Stock Exchange of Thailand
- Progressive rates of 15% to 23% (per the approval of the Cabinet) for locally incorporated companies with paid-up capital of not more than THB 5 million and revenue of not more than THB 30 million per year

**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.
- 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 55 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 and operating software	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 following table 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.

**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)
Chile	10	15	15 (u)
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 SAR	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 (South)	10	15 (c)	15
Kuwait	10	15 (c)(e)(o)	15

	<b>Dividends</b>	<b>Interest (a)(b)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Laos	10	15 (c)(e)	15
Luxembourg	10	15 (c)	15
Malaysia	10	15 (c)	15
Mauritius	10	15 (c)	15 (f)
Myanmar	10	10 (c)	15 (f)(v)
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)
Philippines	10	15 (c)	15
Poland	10	15 (c)	15 (f)(h)
Romania	10	15 (c)	15
Russian Federation (u)	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
  - 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
  - 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.
- (u) The withholding tax rate is 10% for royalties paid for copyrights of literary, artistic or scientific works and the right to use industrial, commercial and scientific equipment.
- (v) The withholding tax rate is 10% for royalties paid for managerial or consultancy services or for information concerning commercial, industrial, or scientific experience.

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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) A business levy and a green fund levy are also imposed. The rate for companies engaged in the downstream petrochemical sector and related sectors is 35%. Upstream petroleum operations are taxed under a separate regime. 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 deemed 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 2012 year of income, the basic rate of corporation tax is 25%.

A business levy at a rate of 0.2% 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
- Companies subject to tax under the Petroleum Taxes Act

A company is not subject to the business 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	25
Motor vehicles	25
Computers	33.3
Plant and machinery	
Light	25
Heavy	25 or 33.3
Rigs	33.3
Aircraft	40

*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 90%. Lessees of plant and machinery may also claim the initial allowance if the lease transfers substantially all of the risks and rewards of ownership to the lessee. The rate of the 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.

Companies and other businesses are required to register for the tax if their turnover exceeds TT\$200,000 a year. Under a proposal, the turnover threshold is expected to increase to TT\$360,000 a year, effective from 1 January 2012.

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 following table 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
Brazil	10/15 (h)	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 (d)	10	10
China	5/10 (c)	10	10
Denmark	10/20 (c)	15	15
France	10/15 (d)	10	10
Germany	10/20 (c)	10 (a)	10
India	10	10	10
Italy	10/20 (c)	10	5
Luxembourg	5/10 (g)	7.5/10 (e)	10
Norway	10/20 (c)	15	15
Spain	0/5/10 (i)	8	5
Sweden	10/20 (c)	10 (a)	20
Switzerland	10/20 (d)	10	10
United Kingdom	10/20 (c)	10	10
United States	10/25 (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%.
- (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 to interest paid on deposits, commercial debts and borrowings from banking enterprises.
- (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 if the recipient is a company holding directly or indirectly at least 25% of the capital of the distributing company.
- (i) The 0% rate applies if the recipient is a company holding directly at least 50% of the capital of the distributing company. The 5% rate applies if the recipient is a company holding directly at least 25% of the capital of the distributing company.

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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 service companies, banks, financial institutions (for example, insurance companies) and telecommunication companies are subject to corporate income tax at a rate of 35%. Handicraft, agricultural and fishing companies are subject to corporate income tax at a rate of 10%. Benefits from exportations realized on or after 1 January 2012 will be subject to corporate income tax at a rate of 10%.
- (b) Applicable to payments to residents and nonresidents.
- (c) The rate is 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.** Companies are subject to tax on profits derived from establishments located in Tunisia and on profits that are deemed to be derived in Tunisia under double tax treaties.

Tunisian-source income that is not realized within the framework of a Tunisian establishment, such as interest and royalties, is subject only to final withholding taxes (see *Royalties*).

**Tax rates.** The standard rate of corporate income tax is 30%. Oil service 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 2012 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. For nonresident and nonestablished companies in Tunisia, capital gains derived from the sale of shares is subject to withholding tax at a rate of 5%, which is levied on the sales price.

As an option, a tax return on capital gains may be filed.

**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.

Starting from 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
- 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*)
- 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
- Gifts and meal expenses, up to a maximum deduction of the lower of 1% of annual gross income or TND 20,000
- Plant manager payroll

**Inventories.** Inventories are valued at cost.

**Provisions.** Doubtful debts of up to TND 100 (TND 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
- Provisions for depreciation of shares of listed companies

Banks may deduct bad debt provisions from their tax base without any limit. This deduction can result in a tax loss.

**Tax depreciation.** Under the Tunisian Tax Code, depreciation must be computed using the straight-line method. Depreciation is deductible only if it is recorded in the accounts.

The following are some of the standard rates of depreciation allowed in Tunisia.

<b>Asset</b>	<b>Rate (%)</b>
Patents and trademarks	20
Capitalized research and development costs	20
Buildings	5
Office furniture and equipment	20
Equipment and machinery	15
Cars	20
Movable equipment	10
Engines	20
Ships	6.25
Computer hardware and software	33.33

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.

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 TND 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 following table 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%
Local tax	0.2%
Professional training tax, on salaries, allowances and fringe benefits paid by an employer	2%
Social security contributions, on employee's annual salary; paid by	
Employer	16.57%
Employee	9.18%
Registration duties	
Work contracts	TND 15 per contract
Company formation	TND 15 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 10 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)
Cameroon	12	15	15
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)
Jordan	– (c)	– (x)	– (y)
Korea (South)	–	12	15
Kuwait	10	2.5/10 (u)	5

	Dividends (t) %	Interest %	Royalties %
Morocco	– (c)	– (i)	15
Netherlands	20 (v)	10	11
Norway	20	12	5/15/20 (b)(p)
Qatar	0	– (x)	5
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 Arab Emirates	0	2.5/10 (u)	7.5
United Kingdom	20 (g)	10/12 (s)	15
United States	20 (h)	15	10/15 (r)
Nontreaty countries	0	20 (u)	15 (w)

- (a) The rate is 10% if the recipient is a company that holds at least 25% of the capital of the payer.
- (b) Tunisia applies a 15% rate instead of the highest rate.
- (c) Dividends are taxed at the domestic rate of the country from which the dividends originate.
- (d) 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.
- (e) The rate is 15% if the recipient is a company that owns at least 25% of the capital of the payer.
- (f) The rate is 12% if the recipient is a company that owns at least 25% of the capital of the payer.
- (g) The rate is 12% if the beneficial owner is a company that controls directly at least 25% of the voting power of the payer.
- (h) The rate is 14% if the recipient is a company that owns at least 25% of the capital of the payer.
- (i) Taxed at the domestic rate of the country of domicile of the recipient.
- (j) 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 the following:
- Technical and economic studies
  - Cinematographic and television films
  - Patents, trademarks, designs and models, plans, and secret formulas and processes
  - Industrial, commercial and scientific equipment
  - 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 the following:
- Patents, designs and models, plans, and secret formulas and processes
  - Information relating to industrial, commercial or scientific experience
  - Technical and economic studies
  - Technical assistance relating to the use of the items mentioned above
- 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 the following:
- Patents, designs and models, plans, and secret formulas and processes
  - Information relating to industrial, commercial or scientific experience
  - 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
  - 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 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.
- (x) Interest is taxed at the domestic rate of the country from which the interest originates.
- (y) Royalties are taxed at the domestic rate of the country from which the royalties originate.

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*This chapter reflects the tax law as of 10 October 2011. Readers should obtain updated information before engaging in transactions or making any decisions.*

**A. At a glance\***

Corporate Income Tax Rate (%)	20
Capital Gains Tax Rate (%)	20
Branch Tax Rate (%)	20

Withholding Tax (%)	
Dividends	15
Interest	
From Repurchase (REPO) Agreements	15
From Deposit Accounts	15
From Loans	0/1/5/10
From Turkish Government Bonds and Bills and Private Sector Bonds	0/10
Royalties from Patents, Know-how, etc.	20
Professional Fees	
Petroleum-Exploration Activities	5
Other Activities	20
Progress Billings on Long-Term Construction and Repair Contracts	3
Payments on Financial Leases	1
Real Estate Rental Payments	20
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0
Carryforward	5

\* The rates in the table are for illustrative purposes only. For detailed information, please contact Ernst & Young in Turkey.

## 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
- Other income and revenue obtained in Turkey

**Rates of corporate tax.** For 2011, the effective corporate tax rate is 20%. However, incentive programs provide for reduced corporate tax rates for income from certain investments in certain sectors (see *Tax incentives*).

**Tax incentives.** Incentive regulations provide for a wide range of incentive and support elements for certain investments with incentive certificates, including reduced corporate tax rates on certain activities in certain regions, government support for interest on loans, government support for employers' shares of social security premiums, value-added tax (VAT) and customs duty exemptions on qualifying investment goods and allocation of treasury-owned lots.

The incentive and support elements vary according to the sector, the size of the investment and the region in which the investment is located.

### Participation exemption

*Dividend income derived from Turkish (resident) participations.* Turkish tax law provides a participation exemption for dividends derived by companies from Turkish (resident) participations. Dividends qualifying for the participation exemption are fully exempt from corporate tax.

To qualify for the participation exemption, a Turkish resident company need only hold a participation in another Turkish resident company.

*Dividend income derived from foreign (nonresident) participations.* The Turkish tax law also provides a participation exemption for dividends derived by companies from foreign participations. Dividends qualifying for the participation exemption are fully exempt from corporate 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 a limited or joint stock company.
- 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 2011).
- The dividends must be transferred to Turkey by the due date of filing of the annual corporate tax return (25 April).

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 2011.
- 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 participation

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*). 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 non-cash assets of the international holding company and if the international holding company has held a shareholding of 10% or more in the foreign limited or joint stock 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% for 2011.

**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.

Seventy-five percent of capital gains derived by corporate taxpayers from the disposal of shares owned for at least two years qualify for corporate tax exemption if the gains for which exemption is claimed are recorded as a special fund under the shareholder's equity account in the balance sheet until the end of the fifth year following the year of sale.

**Administration.** Companies file tax returns based on their financial accounting year.

Tax returns must be submitted to the relevant tax office by the 25th day of the 4th month after the end of the accounting period. The return must be accompanied by the balance sheet, income statement and other required documents.

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 amount can be subtracted 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 *Participation exemption* and *International holding companies*).

Withholding tax at a rate of 15% 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)
- 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.** Corporation tax and similar taxes paid abroad on income that is derived abroad and that is included in the Turkish accounts may be offset against the corporation tax that is assessed on such income in Turkey.

In cases in which the controlled foreign company (CFC) rules are applied, the taxes similar to income and corporation taxes that the foreign affiliate has paid can be set off against the corporation tax that is calculated on the basis of the earnings of the foreign company.

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.

Amounts that are set off against the taxes that are assessed in Turkey on the income derived from the foreign countries may not exceed the tax amount that would be calculated by applying the local corporation tax rate (20%) to such earnings.

Foreign taxes 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 advance 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
- 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 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 the 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.** Assets that are used in a company for more than one year and that are subject to wear and tear may be depreciated.

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 Communiqués, which set forth the useful lives of different types of fixed assets. The following are examples of the useful lives for various fixed assets.

<b>Asset</b>	<b>Useful life (years)</b>
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.

Fixed assets can be depreciated beginning in the year of capitalization (the year in which an asset becomes ready to use). For fixed assets that are purchased as ready to use, the depreciation begins in the year of the acquisition of the fixed asset. For fixed assets that need to be constructed or assembled, the depreciation begins in the year in which the construction or assembly is completed and the assets become ready to use.

In general, an asset qualifies for the annual depreciation rate in the year of capitalization, regardless of the date of capitalization. For example, even if a fixed asset is capitalized in the last month of the accounting year, it is depreciated on an annual basis. The only exception to this general rule is for passenger cars. Depreciation for these cars begins in the month in which the cars are purchased. For example, if a passenger car that was purchased for TL 1,000 is depreciated using a straight-line depreciation rate of 20%, the regular depreciation for a full year is TL 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:

$$\frac{2 \text{ months}}{12 \text{ months}} \times \text{TL } 200 = \text{TL } 33.33$$

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. However, companies can carry forward investment allowance amounts that do not exceed 25% of their taxable income.

**Research and development expenditures.** One hundred percent of research and development (R&D) expenditures may be deducted from the tax base if certain conditions are fulfilled. This is an incentive that is granted in addition to the ordinary expense recognition of R&D expenditures. The incentive covers the following expenses:

- Raw materials and supplies' expenses
- Personnel expenses
- General expenses
- Payments for benefits and services provided by outsourcing companies
- Taxes, duties and fees
- Depreciation and depletion
- Financial expenses

Companies that are not able to deduct R&D expenditures because of insufficient taxable income may deduct the unused amount in the following years.

In addition, to support R&D activities, the Turkish Scientific and Technological Research Institution (TUBITAK) may provide monetary aid to companies with respect to their R&D activities under certain conditions. A new law regulating R&D took effect on 1 April 2008. This law provides various types of incentives such as R&D deductions, wage income withholding exemptions, social security premium support, stamp duty exemption and capital aid for technological enterprises.

**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 after exemptions that apply even in the event of a loss. After the losses are used, the other exemptions that apply in profitable years are administered (that is, the investment allowance and tax-deductible donations).

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 following table summarizes other significant taxes.

<b>Nature of tax</b>	<b>Rate (%)</b>
Value-added tax; imposed on goods delivered and services rendered, including imported goods and services, communications, conveyances by pipeline and certain leases; exports are exempt	
General rate	18
Rates on other items	1/8
Local withholding taxes, on amounts paid to nonresident corporations	Various
Banking and insurance transactions tax; imposed on all types of payments received by banking and insurance companies with	

Nature of tax	Rate (%)
respect to all types of transactions, except financial leasing transactions	
Interbank deposit accounts	1
REPO transactions	1
Sale of government bonds and treasury bills	1
Cambio transactions	0
Other payments	1/5
Special consumption tax; imposed on the delivery, importation or the initial acquisition of certain goods	
Petroleum products, solvents and similar goods (fixed amount per measurement unit depending on the type of goods)	Various
Cars	10 to 84
Buses	1
Midibuses and minibuses	4/9
Planes	0.5
Sailboats	6.7/8
Beverages (minimum fixed amount per measurement unit depending on the kind of goods)	0 to 63
Tobacco products (minimum fixed amount per measurement unit depending on the kind of goods)	30 to 63
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 2011 through 31 December 2011, the monthly lower limit is TL 837 and the upper limit is TL 5,440.50	
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 paid.

Foreign investment partnerships and funds may invest in Turkish securities and freely remit dividends, interest, profits and capital.

Turkish resident companies may now grant loans to related parties residing abroad.

**Transfer pricing.** The Turkish Corporate Tax Code contains transfer-pricing regulations, which include the arm's length principle and the requirement for documentation of all related-party transactions. The arm's length principle applies to all transactions carried out by taxpayers with related parties. Under Turkish transfer-pricing rules, the traditional transfer-pricing methods recommended in the Organization for Economic Cooperation and Development (OECD) model guidelines are acceptable. The main methods that can be applied by the taxpayers in the determination of the arm's length price are the comparable uncontrolled price method, the cost-plus method and the 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.

Transfer-pricing rules apply to both domestic and foreign related-party transactions. Commercial transactions conducted by companies resident in low-tax jurisdictions (tax havens) are considered to be related-party transactions.

The Ministry of Finance has issued Communiqués clarifying the transfer-pricing rules and documentation requirements. Under these Communiqués, taxpayers must prepare annual transfer pricing forms, reports and other documentation.

**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, half of the borrowings are taken into consideration in performing the calculation for disguised capital. 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 related to disguised capital are regarded as nondeductible expenses in determining the corporate tax base. Interest related to disguised capital is treated as a dividend distribution 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 gross 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 TL 100,000 (approximately US\$55,000).

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.** Turkish resident taxpayers are subject to a 30% withholding tax on all payments made in cash or on account that relate to transactions with companies resident in countries that the Council of Ministers considers to be in harmful tax competition. The Council of Ministers has not yet identified these countries. The principal, interest or profit contributions corresponding to 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.

The Turkish tax law includes antiabuse rules. The principal rule is the substance-over-form rule, which is contained in Article 3 of the Tax Procedural Law.

**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 table below shows the maximum withholding rates for dividends, interest and royalties provided under Turkey's double tax treaties.

To benefit from the advantageous rates under the double tax treaties, additional conditions may be required (for example, the recipient is required to be the beneficial owner of the related gain). Readers should obtain detailed information regarding the treaties before engaging in transactions.

	Dividends %	Interest %	Royalties %
Albania	5/15 (a)	10	10
Algeria	12	10	10
Austria	5/15 (a)	5/10/15	10
Azerbaijan	12	10	10
Bahrain	10/15 (c)	10	10
Bangladesh	10	10	10
Belarus	10/15 (c)	10	10
Belgium	5/10 (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

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Denmark	15/20 (e)	15	10
Egypt	5/15 (a)	10	10
Estonia	10	10	5/10 (f)
Ethiopia	10	10	10
Finland (ee)	15/20 (e)	15	10
France	15/20 (g)	15	10
Georgia	10	10	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
Ireland	5/10/15 (aa)	10/15 (bb)	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 (South)	15/20 (e)	10/15 (j)	10
Kuwait	10	10	10
Kyrgyzstan	10	10	10
Latvia	10	10	5/10 (f)
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 (dd)	25/30 (q)	15	10
Oman	10/15 (o)	10 (cc)	0
Pakistan	10/15 (c)	10	10
Poland	10/15 (c)	10	10
Portugal	5/15 (z)	10/15 (m)	10
Qatar	10/15 (c)	10	10
Romania	15	10	10
Russian Federation	10	10	10
Saudi Arabia	5/10 (b)	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

	<b>Dividends</b> %	<b>Interest</b> %	<b>Royalties</b> %
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
Yemen	10	10 (cc)	10
Nontreaty countries	15	0/1/5/10/15	20

- (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 5% rate applies if the recipient owns more than 20% of the payer of the dividends or if the recipient is the central bank or an entity that is wholly owned by the government. The 10% 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 5% rate applies to dividends distributed by Belgian companies. The 10% rate applies to dividends distributed by Turkish companies.
- (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 recipient owns more than 25% of the payer of the dividends. The 10% rate applies to other dividends.
- (l) For Luxembourg recipients, the 10% rate applies if the recipient owns more than 25% of the payer of the dividends and the 20% rate applies to other dividends. For Turkish recipients, these rates are applied as 5% and 20%, respectively.
- (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 recipient 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) For Norwegian recipients, the 25% rate applies if the recipient owns more than 25% of the payer of the dividends and the 30% rate applies to other dividends. For Turkish recipients, these rates are applied as 20% and 25%, respectively.
- (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% 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 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) The 5% rate applies if the recipient owns more than 25% of the payer of the dividends for an uninterrupted period of at least two years. The 15% rate applies to other dividends.
- (aa) For Irish recipients, the 5% rate applies if the dividends are paid out of the profits that have been subject to tax in Turkey and if the recipient owns more than 25% of the voting rights of the payer of the dividends. The 10% rate applies if the recipient owns more than 25% of the voting rights of the payer of the dividends, and the 15% rate applies to other dividends. For Turkish recipients, these rates are applied as 5%, 5% and 15%, respectively.
- (bb) The 10% rate applies to interest received by financial institutions or paid with respect to loans or other debt claims with a term exceeding two years. The 15% rate applies to other interest payments.
- (cc) Interest paid to the government and central bank is exempt.
- (dd) A new treaty between Turkey and Norway was signed on 15 January 2010. This new treaty is effective from 1 January 2012. Under the new treaty, the dividend withholding tax rate may be reduced to 5%. The withholding tax rate for interest ranges from 5% to 10%. The withholding tax on royalties is 10% if certain conditions are satisfied.
- (ee) A new treaty between Turkey and Finland was signed on 6 October 2009. However, this treaty is not yet in effect.

The treaty between Turkey and Germany was terminated on 21 July 2009. A new treaty was signed by the countries in 2011, with the treaty to take effect retroactively from 1 January 2011. However, the treaty is not yet in effect because it has not been accepted by the parliaments of the countries.

Treaties with Australia, Canada, Malta, New Zealand and Switzerland are signed. However, these treaties are not yet in effect.

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## Uganda

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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	15 (c)
Interest	15 (c)
Royalties from Patents, Know-how, etc.	15 (d)
Management Fees	15 (d)
Professional Fees	
Residents	6 (e)
Nonresidents	15
Payments by Government Entities, etc.	6 (f)
Payments for Natural Resources	15 (d)
Income Derived from Transmission of Messages by Equipment Located in Uganda	5 (d)
Shipping Income	2
Branch Remittance Tax	15
Net Operating Losses (Years)	
Carryback	0 (g)
Carryforward	Unlimited

- (a) For mining companies, the tax rate ranges from 25% to 45%, depending on the profitability of the mine.
- (b) Applicable to capital gains on business assets only.
- (c) Applicable to residents and nonresidents (see Section B for further details).
- (d) Applicable to nonresidents.
- (e) This withholding tax is imposed on resident professionals who are not exempt from withholding tax.
- (f) 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.
- (g) 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*). Nonresident 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.
- During the tax year, it performs the majority of its operations in Uganda.

**Rates of corporate tax.** For the year ending 30 June 2012, 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. Oil and gas exploration and production entities are taxed at the normal rate of 30%.

**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.
- 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.** No provisions exist for filing consolidated returns or for relieving losses within a group.

#### D. Other significant taxes

The following table 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. Miscellaneous matters

**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.

**Transfer pricing.** Transfer-pricing regulations are effective from 1 July 2011. They apply to a controlled transaction (transaction between associates) if a person who is party to the transaction is located in and is subject to tax in Uganda and the other person who is a party to the transaction is located in or outside Uganda. The regulations require a person to record in writing sufficient information and analysis to verify that a controlled transaction is consistent with the arm's length principle.

For an income year, this documentation must be in place before the due date for the filing of the income tax return for that year.

### 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	0/5/15 (c)	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.
- (c) The 0% rate applies if the recipient holds at least 50% of the capital of the company paying the dividends. The 5% rate applies if the recipient holds less than 50% of the capital of the company paying the dividends. The 15% rate applies if the beneficial owner of the dividends is not a tax resident of the Netherlands.

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*Unless otherwise indicated, the information presented in this chapter refers to the tax rules, effective from 1 January 2012.*

**A. At a glance**

Corporate Income Tax Rate (%)	21
Capital Gains Tax Rate (%)	21
Branch Tax Rate (%)	21
Withholding Tax (%)	
Dividends	15
Interest	0/15 (a)
Royalties	15
Freight	6
Advertising	20 (b)
Income from Discount Bonds	21 (c)
Insurance	0/4/12 (b)(d)
Other Ukrainian-Source Income	15
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	Unlimited

- (a) Tax is not imposed on the following types of interest payments:
- Interest income received by nonresidents and income (discounts) on state securities, municipal bonds or debt securities, if the fulfillment of these instruments is secured by state or municipal guarantees and if the instruments are sold or placed by nonresidents outside Ukraine through nonresident authorized agents
  - Interest paid to nonresidents on loans obtained by the state that are recorded in the state budget or in the budget of the National Bank of Ukraine
  - Interest on loans obtained by business entities if the fulfillment of these loans is secured by state or municipal guarantees
- (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 market.
- (d) The 0% rate applies to the following:
- Insurance and reinsurance payments for the benefit of nonresidents if the nonresident insurers or reinsurers meet the established criteria of financial reliability
  - Reinsurance payments under compulsory civil liability insurance of nuclear plant operators
  - Insurance payments to nonresident individuals under mandatory insurance agreements
  - Insurance payments under Green Card insurance agreements (mandatory third-party liability insurance for car owners of states participating in the Green Card system)
- The 4% rate applies to the insurance payments made to nonresidents under insurance agreements covering risks outside Ukraine (subject to exceptions). In all other cases, the 12% rate applies.

## B. Taxes on corporate income and gains

**Corporate profit tax.** Ukrainian legal entities and their separate subdivisions (except for representative offices) are subject to corporate profit tax (CPT) on their worldwide income and gains. Foreign legal entities (except for the organizations that have diplomatic privilege or immunity) are subject to tax on income sourced in Ukraine. Permanent establishments of nonresidents that receive income from Ukrainian sources or perform agency (representation) and other services for such nonresidents are also subject to CPT in Ukraine.

**Rates of tax.** Effective from 1 January 2012, the CPT rate is 21%. The rate will gradually decrease according to the following schedule:

- 19%, effective from 1 January 2013
- 16%, effective from 1 January 2014

A 0% CPT regime applies to business entities with limited turnover that meet certain criteria and that do not conduct activities disallowed for this regime. The 0% CPT regime is available during the transition period from 1 April 2011 until 1 January 2016.

**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. The tax return for a quarter must be filed by the 40th day of the quarter following the reporting quarter. 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.** Effective from 1 January 2012, a company distributing dividends to resident or nonresident shareholders must pay a 21% 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 21% advance corporate profit tax against its regular corporate profit tax liabilities.

Exemption from advance corporate profit tax on dividends applies to the following dividends:

- Dividends paid to individuals
- Dividends paid in the form of shares if the shareholders' participation remains unchanged

- Dividends paid by joint investment vehicles
- Dividends paid to shareholders of the parent (subholding) companies, up to the amount of dividends received by such parent (subholding) companies from third persons
- Dividends paid by managers of real estate funds on the distribution of income of such funds
- Dividends paid by insurance companies
- Dividends paid by payers of fixed agricultural tax

Dividends distributed to nonresidents are subject to withholding tax at a rate of 15%, unless an applicable double tax treaty provides otherwise.

Legal entities resident in Ukraine do not include dividends received from Ukrainian resident or controlled nonresident legal entities in their taxable income. Dividends received from nonresidents that are not controlled by the taxpayer or from nonresidents having offshore status are not eligible for tax relief.

**Foreign tax relief.** Ukrainian enterprises may credit foreign tax paid with respect to foreign-source profits 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.

### C. Determination of taxable profit

**General.** Taxable profit is defined as income of the reporting period less cost of goods (works, services) and other expenses, including depreciation charges. Income received (accrued) in foreign currency is converted into local currency at the official exchange rate as of the date of such income accrual or, in the case of advance payment, as of the date of receipt.

Deductible expenses are recognized on an accrual basis in line with the national accounting standards. Deductible expenses consist of “operating expenses” (cost of goods, works and services) and “other expenses.”

Operating expenses are recognized in the period in which income from the sale of such goods and services is recognized (matching). Other expenses (with some exceptions) are recognized in the period in which they are incurred.

The Tax Code limits the deductibility of the following expenses:

- Consulting, marketing and advertising services purchased from nonresidents (except for such payments made for the benefit of the nonresidents’ permanent establishments) are deductible up to 4% of the taxpayer’s total income (revenue) from sales of goods and services in the preceding reporting year (the revenue does not include value-added tax and excise tax). Consulting, marketing and advertising services purchased from nonresidents with offshore status are not deductible for tax purposes.
- Service fees are not deductible for tax purposes if they are paid to persons using the simplified taxation system (except for fees for information technology services).
- Fees for engineering services payable to nonresidents may be deducted in the amount not exceeding 5% of customs value of the imported equipment. Fees for engineering services are not deductible for tax purposes if they are paid to an entity that is

not a beneficial owner of the fees or to an entity with offshore status.

- Royalties paid to nonresidents may be deducted in an amount not exceeding 4% of income earned in the preceding year. This limitation does not apply to business entities operating in the fields of television, radio and cinema. The Tax Code now also contains a list of additional criteria for the deductibility of royalties.

Under the Tax Code, the profit of three-, four- and five-star hotels earned from certain types of activities is exempt from the CPT for 10 years, effective from 1 January 2011.

**Depreciation.** For purposes of tax depreciation, fixed assets are defined as assets that are designated for use in a taxpayer's business activity for more than one year and that have a value exceeding UAH 2,500. The Tax Code provides for 16 groups of tangible fixed assets, 6 groups of nontangible fixed assets and 5 methods of tax depreciation. Similar to financial accounting, tax depreciation is accrued per each item.

The list of depreciation methods is in line with methods stipulated for financial accounting. The following are the methods:

- Straight-line
- Declining-balance
- Accelerated declining balance (applies only to machinery and equipment and transport facilities; these assets are in Groups 4 and 5; see below)
- Sum-of-the-years' digits
- Unit-of-production

Depreciation of an asset is accrued on a monthly basis throughout the useful life cycle of the asset. The following table shows the minimum allowable term of the useful lives of assets.

Group	Assets	Minimum term of useful life Years
2	Capital expenditure on land improvements, not related to construction	15
3	Buildings	20
	Facilities	15
	Transmission devices	10
4	Machinery and equipment	5
	Electronic and computer equipment	2
5	Transport facilities	5
6	Tools, appliances and equipment (furniture)	4
7	Animals	6
8	Perennial plants	10
9	Other fixed assets	12
12	Temporary facilities	5
14	Returnable containers	6
15	Rental objects	5
16	Long-term biological assets	7

Assets of Group 1 (land plots) and Group 13 (natural resources) are not subject to depreciation.

The minimum term of useful life is not determined for the assets of Group 10 (library holdings) and Group 11 (tangible assets of small value).

Depreciation charges for a reporting quarter per each fixed asset equal the sum of depreciation charges for the three months of such quarter.

**Relief for losses.** The Tax Code does not restrict the carryforward of losses. However, it is necessary to monitor relevant developments in the tax law because ad-hoc restrictions are possible.

The law does not allow tax losses to be carried back (that is, offsetting the tax loss of the current year against the taxable income of previous years to reduce tax payments). However, because taxpayers complete their CPT return cumulatively, the carryback of a tax loss within a year may be technically possible.

**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 another territorial community (a branch located on the territory of another territorial community means an office, other than the head office, located in the district [region or city/village] other than the district of the head office). 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
(The standard rate will be reduced to 17%, effective from 1 January 2014.)	
Exports of goods and ancillary services	0
Excise duties	Various
Customs duties	Various
Environmental 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 the hryvnia (UAH). The official exchange rate of the hryvnia against the U.S. dollar can be found at the NBU's web site ([www.bank.gov.ua](http://www.bank.gov.ua)); the retail exchange rate may differ from the official exchange rate. 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.
- Ukrainian enterprises must obtain an individual license (permission) from the NBU to engage in certain business transactions, including the opening of bank accounts abroad.
- Ukrainian enterprises must collect their foreign currency proceeds for goods, works or services supplied by them within 180 days from the date of exportation or supply of services. Similarly, foreign currency prepayments for goods, works or services must not exceed 180 days.
- Payments for services rendered by nonresidents, as well as cross-border lease and royalty 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. 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 with offshore status is deductible for tax purposes. The Cabinet of Ministers of Ukraine publishes the list of jurisdictions that are considered to be offshore zones (tax-haven jurisdictions). The current list includes approximately 40 tax havens and countries with concessionary tax regimes.

The Tax Code does not allow the deduction of royalties and fees for marketing, consulting, engineering and advertising services paid to nonresidents with offshore status.

**Transfer pricing.** Transactions between related parties, as defined by the law, as well as transactions with nonresidents and other persons that are not considered corporate profit taxpayers on a regular basis, are subject to transfer-pricing regulations. The regulations provide that for tax purposes the transactions between such parties must be reported at arm's length prices.

The Tax Code now contains a new arm's length price method, which will enter into effect on 1 January 2013. Until then the old rules remain effective. Under the existing rules, the contractual price is deemed to be an arm's length price, unless the tax authorities prove otherwise. 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 taxpayers' 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 of 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> %
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)(pp)	0/10 (e)(nn)	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)(oo)	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)	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)	5
Iceland	5/15 (d)	0/10 (jj)	10
India	10/15 (d)	0/10 (e)	10
Indonesia	10/15 (d)(qq)	0/10 (e)	10
Iran	10	0/10 (e)	10
Israel	5/10/15 (d)(z)	0/5/10 (dd)	10
Italy	5/15 (d)	0/10 (e)	7
Japan	15	0/10 (e)	0/10 (ww)
Jordan	10/15 (d)(ii)	0/10 (hh)(ii)	10 (ii)
Kazakhstan	5/15 (d)(pp)	0/10 (e)	10
Korea (South)	5/15 (d)	0/5 (e)	5
Kuwait	0/5 (cc)	0	10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
Kyrgyzstan	5/15 (d)	0/10 (e)	10
Latvia	5/15 (d)	0/10 (e)	10
Lebanon	5/15 (d)	0/10 (e)	10
Libya	5/15 (d)	10	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)	10
Mongolia	10	0/10 (rr)	10
Morocco	10 (ee)	0/10 (e)	10
Netherlands	0/5/15 (i)	0/2/10 (j)	0/10 (k)
Norway	5/15 (d)	0/10 (e)(kk)	5/10 (x)
Pakistan	10/15 (tt)	0/10 (uu)	10
Poland	5/15 (d)	0/10 (e)	10
Portugal	10/15 (q)	0/10 (e)(ll)	10
Romania	10/15 (d)	0/10 (e)	10/15 (s)
Russian Federation	5/15 (o)	0/10 (e)	10
Singapore	0/5/15 (ss)	0/10 (e)	7.5
Slovak Republic	10	10	10
Slovenia	5/15 (d)	5	5/10 (gg)
South Africa	5/15 (d)	0/10 (e)(ll)	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
Turkmenistan	10	0/10 (e)	10
United Arab Emirates	0/5/15 (y)	0/3 (e)	0/10 (k)
United Kingdom	5/10 (d)(mm)	0	0
United States	5/15 (d)	0	10
Uzbekistan	10	0/10 (e)	10
Vietnam	10	0/10 (e)	10
Yugoslavia (vv)	5/10 (d)	0/10 (e)	10
Nontreaty countries	15	15	15

(a) The 0% rate applies to dividends paid to one or more companies that are the beneficial owners of these dividends and if either of the following conditions is satisfied:

- The recipient company or companies hold directly or indirectly at least 50% of the capital of the company paying the dividends, and the total amount of their investments in the paying company is not less than 5 million French francs.
- The investments of the recipient companies in the company paying the dividends are guaranteed or insured by the other state, the central bank of such state or a person acting on behalf of such state.

The 5% rate applies to dividends paid to companies that own at least 20% of the capital of a Ukrainian resident payer or 10% of the capital of a French resident 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

- Payments for information concerning 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 may apply to the following:
  - Interest paid to or by government institutions of the contracting states
  - Interest paid to entities authorized by government institutions
  - Interest on debt claims that are warranted, insured or directly or indirectly financed by the state or a financial institution wholly owned by the state
 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 the following:
  - Interest paid on loans granted by banks or other financial institutions of the other state, including investment banks, savings banks and insurance companies
  - Interest paid with respect to the sale on credit of industrial, commercial or scientific equipment, or with respect to the sale or furnishing on credit of goods or merchandise or services by an enterprise to another enterprise
 The 10% 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 by a company resident in Ukraine to a company that is resident in Finland and that is the beneficial owner of the dividends if either of the following circumstances exists:
  - The Finnish Guarantee Board has issued an investment guarantee for dividends paid or for the capital invested on which the dividends are paid.
  - The recipient of the dividends has made an investment of at least US\$1 million in the capital of the payer and holds at least 50% of the equity capital of the company paying the dividends.
 The 0% rate is allowed with respect to dividends paid for any tax year within the period for which the above-mentioned guarantee is in force or, if no such guarantee is made, with respect to dividends paid for the first three years

following the year in which the investment is made. 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
  - 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 right to use, software, patents, trademarks, designs or models, plans, or secret formulas or processes, or for information concerning industrial, commercial or scientific experience. 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 the following:
- Interest paid on loans provided, guaranteed or insured by a government of a state where the beneficial owner of the interest is located, or interest on loans made, guaranteed or insured on behalf of such government by an authority thereof that is so entrusted
  - 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) Notwithstanding the provisions allowing the 5% reduced rate (see footnote [d]), the 10% 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 and if the dividend payer is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli company tax.
- (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 the Hong Kong Special Administrative Region (SAR).
- (cc) The 0% rate applies to dividends paid to the government, a political subdivision or local authority, the central bank or other state financial institution. The 5% rate applies to all other dividends.
- (dd) The 0% rate applies to interest paid on loans granted by the government of a contracting state, 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 a contracting state has a permanent establishment in the other state, such permanent establishment may be subject to a withholding tax under the law of that other state. 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 a contracting state and paid to the government of the other contracting state, political subdivisions thereof or agencies (including financial institutions) wholly owned by that government or a political subdivision is exempt from tax in the state where the income arises, unless the rule mentioned in the following sentence applies. Interest on securities, bonds or debentures issued by the government of a contracting state, political subdivisions thereof or agencies (including financial institutions) wholly owned by that government or political subdivision thereof is taxable only in that state.
- (gg) The 5% rate applies to royalties paid for the use of, or right to use, scientific works, 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. The 10% rate applies to royalties paid for the use of, or the right to use, copyrights of literary or artistic works, including cinematographic films, and tapes for television or radio broadcasting.
- (hh) Interest derived by the government of the contracting state including local authorities thereof, a political subdivision, the central bank or any financial institution controlled by such government, the capital of which is wholly owned by the government of the contracting state, is exempt from tax.
- (ii) The treaty rates do not apply to residents of a contracting state who perform their activity outside of this state if the income and profits of such persons are exempt from tax or are taxed at a substantially lower rate in such state.
- (jj) The 0% rate applies if interest is received and actually held by the government or a political subdivision. Interest paid to and held by a resident of one contracting state is exempt from tax in the other contracting state if it is paid with respect to a loan made, guaranteed or insured or with respect to any other debt claim or credit, if the loan, debt claim or credit is guaranteed or insured on behalf of the first-mentioned state or by an authorized organ.
- (kk) The 0% rate also applies if the interest is paid by a purchaser to a seller with respect to commercial credit resulting from deferred payments for goods, merchandise, equipment or services, unless the sale or indebtedness is between associated persons.
- (ll) The 0% rate also applies to interest paid to an institution (including a financial institution) with respect to a loan made under an agreement between the governments of the contracting states.
- (mm) The reduced rates apply if the beneficial owner of the dividends is subject to tax with respect to such dividends.
- (nn) The 0% rate also applies to interest arising in a contracting state and paid to a resident of the other contracting state that was established and operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans if the following conditions are satisfied:

- The recipient is the beneficial owner of the interest and is generally exempt from tax in the other state.
  - The interest is not derived from the carrying on of a trade or a business or from a related person.
- (oo) The 0% rate also applies to interest paid with respect to indebtedness incurred in connection with the sale on credit of industrial, commercial or scientific equipment by an enterprise that is resident of one contracting state to an enterprise resident in the other contracting state, unless the sale or indebtedness is between associated enterprises.
- (pp) Tax imposed on the earnings of a company attributable to a permanent establishment in a contracting state in addition to the tax that would be chargeable on the earnings of a company that is a national of that state may not exceed 5% of the amount of such earnings.
- (qq) If a resident of a contracting state has a permanent establishment in the other state, such permanent establishment may be subject to a withholding tax under the law of that other state. 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. This measure does not affect provisions contained in production-sharing contracts and contracts of work (or any other similar contracts) relating to the oil and gas sector or other mining sector entered into by the government of Indonesia, its instrumentalities, its relevant state oil and gas company or any other entities of the government of Indonesia, with a person that is a resident of the other contracting state.
- (rr) The 0% rate applies to the interest paid with respect to bonds, debentures or similar obligations of the government, political subdivisions, local authorities or the central bank.
- (ss) The 0% rate applies to dividends if the beneficial owner of the dividends is the government, the central bank, or other government institutions or statutory bodies. The 5% rate applies to dividends if the beneficial owner is a company (other than a partnership) that holds directly at least 20% of the capital of the payer. The 15% rate applies to other dividends.
- (tt) The 10% rate applies to dividends paid to the beneficial owner of the dividends if the beneficial owner owns directly at least 25% of the capital stock of the company paying the dividends. The 15% rate applies to other dividends.
- (uu) The 0% rate applies to interest received and belonging to the government, political subdivisions, local authorities or the central bank.
- (vv) The double tax treaty with Yugoslavia applies to Serbia and Montenegro.
- (ww) 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 and films or tapes for radio or television broadcasting. The 10% rate applies to the royalties 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.

Ukraine has ratified a double tax treaty with Cuba, but this treaty is pending.

A Governmental Order dated 28 July 2010 authorized the Minister of Finance to sign a tax treaty with Saudi Arabia.

Ukraine signed a tax treaty with Luxembourg, but the Ukrainian parliament has not ratified it.

Ukraine has negotiated a double tax treaty with Malta, but this treaty has not yet been signed.

Ukraine is negotiating double tax treaties with Guinea and Tunisia.

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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. See Section B for further information.

**B. Taxes on corporate income and gains**

**Corporate income tax.** Although no federal taxation currently exists in the United Arab Emirates (UAE), each of the individual Emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain) has issued corporate tax decrees that theoretically apply to all businesses established in the UAE. However, in practice, these laws have not been applied. Taxes are currently imposed at the Emirate level only on oil and gas producing companies in accordance with specific government concession agreements, and on branches of foreign banks under specific tax decrees or regulations or in accordance with agreements with the Rulers of the Emirates in which the branches operate.

The preceding paragraph describes how the practice has evolved in the UAE. No general exemption is contained in the law. Investors in the UAE should be aware of the risk that the law may be more generally applied in the future and of the remote risk that it may be applied retroactively.

**Tax incentives.** Several of the Emirates have free zones which offer tax and business incentives aimed at making the UAE a global financial and commercial center. The incentives usually include tax exemptions for a guaranteed period, the possibility of 100% foreign ownership, absence of customs duty within the free zone and a “one-stop shop” for administrative services. The free zones include, but are not limited to, the Dubai Airport Free Zone (DAFZ), Dubai International Financial Centre (DIFC) for financial

services, Dubai Internet City (DIC), Dubai Media City (DMC), Dubai Studio City (DSC) and Jebel Ali Free Zone (JAFZ). approximately 30 free zones are located in the Emirate of Dubai alone.

### C. Customs duties

The member states of the Gulf Cooperation Council (GCC), which are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, approved regulations for the implementation of the GCC Customs Union on 22 December 2002. All of the states have adopted the unified customs duty generally calculated at 5% of the invoice value on most goods (except those on the exempted list) imported into the region. If goods are shipped directly from a non-GCC country to the customer, duty is payable at the first entry point. The duty is levied on the cost, insurance and freight (CIF) value of the imported goods as evidenced by the manufacturers' or suppliers' invoices. The duty is payable by the importer of record.

### D. Foreign-exchange controls

Neither the federal government of the UAE nor the individual Emirates impose foreign-exchange controls.

### E. Tax treaties

The UAE has more than 40 tax treaties currently in force including treaties with Algeria, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, China, Cyprus, the Czech Republic, Egypt, Finland, France, Germany, India, Indonesia, Italy, Korea (South), Lebanon, Luxembourg, Malaysia, Malta, Mauritius, Morocco, Mozambique, the Netherlands, New Zealand, Pakistan, Philippines, Poland, Romania, Seychelles, Singapore, Spain, Sri Lanka, Sudan, Syria, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan and Vietnam.

In addition, treaties with the following countries are in various stages of negotiation, renegotiation, signature, ratification, translation or entry into force.

Bosnia-Herzegovina	Jordan	Switzerland
Greece	Kazakhstan	Tajikistan
Hong Kong SAR	Mongolia	Yemen
Ireland		

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## United Kingdom

(Country code 44)

*U.K. mobile phone numbers are not preceded by a city code. When dialing these numbers from within the United Kingdom, a zero must be added as a prefix.*

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**A. At a glance**

Corporate Income Tax Rate (%)	26 (a)(b)
Capital Gains Tax Rate (%)	26 (c)
Branch Tax Rate (%)	26
Withholding Tax (%)	
Dividends	0
Interest	20 (d)
Royalties from Patents, Know-how, etc.	20 (d)
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	1
Carryforward	Unlimited

- (a) The small profits rate of corporation tax is 20%. Effective from 1 April 2012, the main rate of corporation tax will decrease to 24%, while the small profits rate will remain at 20%. The intention is that the main rate will decrease by 1% annually to 22%, effective from 1 April 2014. The main rate of corporation tax for ring-fence profits (that is, profits from oil extraction and oil rights in the United Kingdom and the U.K. continental shelf) is 30% (small profits rate of 19%). The rates for ring-fence profits will not change on 1 April 2012.
- (b) The small profits rate of 20% 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) This tax applies 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. However, under a provision contained in the 2011 Finance Act, a company can elect to exempt non-U.K. branch income and losses from U.K. corporation tax, subject to certain transitional rules. This election is irrevocable and takes effect from the accounting period after the one in which the election is made.

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 separate enterprise 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 corporation tax purposes.

**Rates of corporation tax.** The main rate of corporation tax for large companies (companies with taxable profits above £1,500,000) is 26% for the financial year beginning 1 April 2011. This rate will be reduced to 24% for the financial year beginning 1 April 2012. The intention is that the rate will decrease to 22% by the financial year beginning 1 April 2014. The rate is 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 profits rate of corporation tax, which is 20% (19% on ring-fence profits of companies) if its taxable profits for an accounting period are less than £300,000. The effective marginal rate for companies with non-ring-fence profits between £300,000 and £1,500,000 is 27.5% (25% for the financial year beginning 1 April 2012). 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.

**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. This indexation allowance may be used only to eliminate a gain; it may not be used to create an allowable loss.

The Substantial Shareholdings Exemption (SSE) broadly exempts from U.K. tax any capital gain on disposals made by trading companies or groups with substantial shareholdings (more than 10%) in other trading companies or groups. The following three sets of conditions must be satisfied:

- The substantial shareholding requirement
- Conditions relating to the “investing” company or group
- Conditions relating to the “investee” company or subgroup

Broadly, both the investing company and the investee company must be a trading company, group or subgroup for 12 months before the disposal and immediately afterwards.

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.

**Administration.** 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 first day 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.* 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
- 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. For dividends received by U.K. resident companies, the United Kingdom has a dividend exemption regime. A dividend or other income distribution received on or after 1 July 2009 is generally exempt from U.K. corporation tax if all of the following conditions are satisfied:

- The distribution falls within an exempt class or, if the recipient is a “small” company, the payer is resident in a qualifying territory.
- The distribution is not of a specified kind.
- No deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory with respect to the distribution.

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.

**Interest.** 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 made 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.

**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. Foreign tax relief does not apply if the dividend satisfies the conditions for the dividend exemption (see *Dividends*).

## 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 “loan relationships” 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 antiabuse measures as well as other measures, such as the Worldwide Debt Cap, which can restrict the allowable deductions (for further details, see Section E).

Foreign-exchange differences on most monetary items are taxable or relievable in accordance with GAAP accounting treatment. Specific rules apply to foreign-exchange differences arising on loans that hedge exchange risk on shareholdings.

**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.** If leases of plant or machinery function essentially as financing transactions (long-funding leases), they are taxed as such and the following rules apply:

- The lessor includes only the finance element of the rentals arising under the lease in income.
- The lessee deducts only the finance element of the rentals payable over the life of the lease and is entitled to capital allowances.

This regime applies to finance leases and certain operating leases. With the exception of some hire-purchase transactions, leases of less than five years are not affected.

### Tax depreciation (capital allowances)

*Plant and machinery.* Expenditure on plant and machinery, including some cars bought after April 2009, is pooled together (the main pool) and allowances are given at 20% on a reducing-balance basis. Effective from 1 April 2012, the rate of the allowance will be reduced to 18%. Assets with a useful life of 25 years or more (long-life assets) are depreciated at 10% on a reducing-balance basis (8% from 1 April 2012). Integral features to a building qualify for a 10% rate of capital allowances (8% from 1 April 2012). An annual investment allowance (AIA) of 100% is available for the first £100,000 of investment in plant and machinery (other than cars) to all businesses, regardless of size. One AIA is available to each individual business or corporate group. Effective from 1 April 2012, the AIA will be reduced to £25,000.

A 100% FYA rate applies to cars with CO<sub>2</sub> emissions of less than 110g/km. Cars emitting between 110g/km and 160g/km are added to the main pool and the 20% rate applies. Cars emitting above 160g/km are added to the special-rate pool and the 10% rate applies. For leased cars, the formula restricting allowable lease rentals for cars costing over £12,000 is replaced by the disallowance as a deduction for tax purposes of 15% of the lease costs for leased cars with CO<sub>2</sub> emissions above 160g/km.

*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. Lists of qualifying technologies are reviewed annually. Companies may surrender losses derived from enhanced capital allowances (for first-year 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. Several Enterprise Zones will be introduced, effective from 1 April 2012, and accordingly, 100% first-year allowances will be available from 1 April 2012 for qualifying plant and machinery to be used primarily in the Enterprise Zone. This allowance will be available on expenditure incurred between 1 April 2012 and 31 March 2017.

*Industrial and agricultural buildings.* Allowances for industrial buildings and agricultural buildings were fully withdrawn on 1 April 2011.

*General.* Capital allowances are available for expenditure on 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 preceding 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 to allow a transfer of a proportion of the losses; 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 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 both situations, antiavoidance provisions that aim to prevent artificial arrangements exist.

Capital losses cannot be grouped with capital gains of other group members under the above provisions. However, effective from 21 July 2009, the seller of an asset and another group company may jointly elect to transfer the chargeable gain or allowable loss arising to that other group company. This loss can be carried forward in the transferee 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 after 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. Any chargeable gain or allowable loss is then either added to the proceeds from the share sale causing the company to leave the group (and potentially be covered by SSE) or taxed in the company itself. Antiavoidance provisions that aim to prevent artificial arrangements exist.

#### 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 the United Kingdom by a taxable person in the course of business (taxable if annual supplies exceed £73,000 [£77,000 from 1 April 2012])	0/5/20
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 (effective from 1 January 2010)	
Up to £125,000	0
£125,001 to £250,000 (Qualifying first-time buyers will pay 0% up to £250,000 for two years from 25 March 2010.)	1
£250,001 to £500,000	3
£500,000 to £1,000,000	4
£1,000,000 to £2,000,000	5
Over £2,000,000 (effective from 22 March 2012)	
General rate	7
In particular circumstances	15

Nature of tax	Rate (%)
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 employees' weekly wages exceeding £136 (£144, effective from 1 April 2012)	13.8
Employee; imposed on employees' weekly wages	
On first £139 (£146, effective from 1 April 2012)	0
On next £678 (£671, effective from 1 April 2012)	12
On balance of weekly wage	2
Bank levy; based on the total chargeable equity and liabilities (subject to various exclusions) as reported in relevant balance sheets at the end of a chargeable period; a half-rate applies to long-term amounts and a nil rate allowance is granted for the first £20 million	0.088/0.044
(The rates are increased to 0.105% and 0.525%, effective from 1 January 2013.)	

## 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 anti-avoidance provisions generally apply if the transaction is not carried out for bona fide commercial reasons. Specific antiarbitrage provisions applying to both deductions and receipts may be relevant to cross-border transactions.

Under certain specified provisions of the legislation, advanced statutory clearance can be obtained from HMRC. HMRC has introduced a new nonstatutory clearance procedure under which companies may write to their local Inspector in advance of a transaction for a written confirmation of HMRC's view on how the tax law will apply to that transaction. HMRC will provide advance clearance within 28 days if evidence exists that the transaction is genuinely contemplated. It will also aim to respond within this

time period if certainty is sought for a transaction that has already taken place. HMRC will not provide clearance if it believes that the arrangements are primarily intended to obtain a tax advantage.

The United Kingdom has implemented a system requiring the disclosure of certain transactions and arrangements to HMRC. As a direct result of this disclosure regime, tax-planning schemes are frequently disclosed in advance to HMRC.

A general antiabuse rule is currently under discussion, and possible draft legislation is expected during the third quarter of 2012. It is intended that any new rule would be targeted at highly abusive transactions and would not affect the center ground of responsible tax planning.

**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.

**Interest restrictions.** 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 must 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.

*Worldwide Debt Cap.* The Worldwide Debt Cap (WWDC) is a cap on allowable interest deductions in addition to thin-capitalization restrictions and other antiavoidance provisions. The WWDC provisions are designed to restrict the U.K. tax deduction available for financing expenses based on the gross financing expense of the worldwide group. The WWDC legislation applies to accounting periods beginning on or after 1 January 2010.

The WWDC provisions include a gateway test. If the gateway test is satisfied, the U.K. group falls outside of the remaining provisions. Under the gateway test, broadly, the WWDC applies only if a group's U.K. net debt exceeds 75% of the worldwide gross debt.

If the WWDC applies and if the tested expense amount exceeds the available amount, the excess amount is disallowed. Broadly, the tested expense amount is the aggregate net finance expense of all U.K. group companies that have a net finance expense above £500,000, and the available amount is the group's external worldwide finance expense which is taken from the consolidated financial statements. If a disallowance arises, some interest income may be exempted from U.K. tax. The amount of the exempted income is limited to the lower of the aggregate net finance income of all U.K. group companies (above £500,000) and the total disallowed amount.

**Controlled foreign companies.** The controlled foreign company (CFC) legislation is currently subject to a major rewrite, which will introduce an entirely new set of complex provisions. The 2012 Finance Bill contains commencement measures providing that the new rules will be effective for accounting periods of the relevant CFC beginning on or after 1 January 2013.

The existing rules are set out below. These rules will apply up to the introduction of any proposed changes.

The existing CFC rules provide that resident companies that hold a 25% or greater interest in a 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 is resident in an approved territory, 90% of its income is considered to be "local source" (as defined) and certain anti-abuse conditions are met.

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.
- The diversion of profits from the United Kingdom is not the underlying reason for the CFC's existence.

U.K. companies must include amounts chargeable under the CFC legislation in their tax returns.

New legislation was introduced following the *Cadbury Schweppes* case, in which the European Court of Justice (ECJ) held that the

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.” If a CFC carries out its business activities in the European Economic Area (EEA), it may reduce its chargeable profits for CFC purposes by the net economic value that broadly arises from the activities of people located in an EEA territory rather than from capital located offshore.

**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.

**Impact of the European Court of Justice Decisions.** The U.K. tax system is currently subject to significant external influence in the form of binding 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 ECJ judgments in *Marks & Spencer v Halsey*, *Test Claimants in the Franked Investment Income Group Litigation* and *Cadbury Schweppes* (see *Controlled foreign companies*) significantly influence 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, but new U.K. legislation was enacted as a result of the *Marks & Spencer* and *Cadbury Schweppes* cases (see *Controlled foreign companies*). Because these cases and several other cases have held that some fundamental aspects of the U.K. domestic law are contrary to EC law, it is possible that ECJ decisions will lead to further changes in the U.K. tax system in the near future.

## F. Treaty withholding tax rates

The rates in the following table 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)	Interest (b) %	Royalties (b) %
Antigua and Barbuda	(2)	20	0
Argentina	(2)	0/12 (l)	3/5/10/15 (m)
Armenia (x)	(2)	5	5
Australia	(2)	0/10	5
Austria	(1)	0	0/10
Azerbaijan	(2)	0/10	5/10 (n)
Bangladesh	(2)	7.5/10 (o)	10
Barbados	(1)	15	0/15 (u)
Belarus	(2)	0	0
Belgium	(4)	15	0
Belize	(1)	20	0
Bolivia	(2)	0/15	15
Bosnia-Herzegovina	(1)	10	10
Botswana	(1)	0/10	10
Brunei	(1)	20	0

Residence of recipient	Payments by U.K. companies of		
	Dividends (a)	Interest (b) %	Royalties (b) %
Bulgaria	(2)	0	0
Canada	(2)	0/10	0/10 (d)
Chile	(2)	5/15 (f)	5/10 (j)
China	(2)	0/10	7/10 (v)
Côte d'Ivoire	(2)	0/15	10
Croatia	(1)	10	10
Cyprus	(1)	10	0/5 (g)
Czech Republic	(2)	0	0/10 (h)
Denmark	(2)	0 (c)	0 (c)
Egypt	(2)	0/15	15
Estonia	(2)	0/10	5/10 (j)
Falkland Islands	(2)	0	0
Faroe 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	20
Guyana	(2)	0/15	10/20 (r)
Hong Kong SAR	(2)	0	3
Hungary	(2) (c)	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	20
Israel	(1)	15	0/15 (r)
Italy	(4)	0/10	8
Jamaica	(1)	12.5	10
Japan	(1)	0/10	0
Jersey	(2)	20	20
Jordan	(2)	0/10	10
Kazakhstan	(2)	0/10	10
Kenya	(1)	0/15	15
Kiribati	(1)	20	0
Korea (South)	(2)	0/10	2/10 (i)
Kuwait	(2)	0	10
Latvia	(2)	0/10	5/10 (j)
Lesotho	(2)	0/10	10
Libya	(2)	0	0
Lithuania	(2)	0/10	5/10 (j)
Luxembourg	(4)	0	5
Macedonia	(2)	0/10	0
Malawi	(2)	0/20 (p)	0/20 (p)
Malaysia	(1)	0/10	8
Malta	(3)	0/10	10
Mauritius	(1)	0/20 (o)	15
Mexico	(2)	0/5/10/15	10
Moldova	(2)	0/5	5
Mongolia	(2)	0/7/10 (o)	5

Residence of recipient	Payments by U.K. companies of		
	Dividends (a)	Interest (b) %	Royalties (b) %
Montenegro (s)	(1)	10	10
Montserrat	(1)	20	0
Morocco	(2)	0/10	10
Myanmar (Burma)	(2)	20	0
Namibia	(2)	20	0/5 (s)(t)
Netherlands	(2) (c)	0	0
New Zealand	(2)	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)	15/20 (r)
Poland	(1)	0/5	5
Portugal	(2)	10	5
Qatar	(2)	0/20	5
Romania	(1)	10	10/15 (n)
Russian Federation	(2)	0	0
St. Kitts and Nevis	(2)	20	0
Saudi Arabia	(2)	0	5/8 (i)
Serbia	(1)	10	10
Sierra Leone	(1)	20	0
Singapore	(2)	0/10	10
Slovak Republic	(2)	0	0/10 (h)
Slovenia	(1)	0/5	5
Solomon Islands	(1)	20	0
South Africa	(2)	0	0
Spain	(1)	12	10
Sri Lanka	(2)	0/10 (o)	0/10 (w)
Sudan	(1)	15	10
Swaziland	(2)	20	0
Sweden	(4)	0	0
Switzerland	(2)	0	0
Taiwan	(2)	0/10	10
Tajikistan	(2)	0	0
Thailand	(1)	0/10/20 (o)	5/15 (n)
Trinidad and Tobago	(1)	0/10	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	0
Uzbekistan	(2)	0/5	5
Venezuela	(2)	0/5	5/7 (k)
Vietnam	(2)	0/10	10
Zambia	(1)	10	10
Zimbabwe	(1)	0/10	10
Nontreaty countries	– (e)	20	20

(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% or more of the voting power of the company paying the dividend, subject to a reduction of 5% 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, 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 royalties paid for copyrights of literary, dramatic, musical or artistic works (except motion pictures, films, videotapes and certain other items), payments for patents or commercial or industrial experience or payments for the use of computer software.
- (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 lower rate applies to payments for the use of, or right to use, industrial, commercial or scientific equipment. The higher 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.
  - 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).
    - 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 or payments for industrial experience, including the rendering of technical assistance. The 15% rate applies to other royalties.
- (n) The lower rate applies to copyright royalties.
- (o) The lower rate (the 7% rate under the Mongolia treaty and the 10% rate under the India and Thailand treaties) 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 cinematographic, television and radio broadcasting royalties and is capped by the nontreaty rate.
- (s) The applicability to Montenegro of the treaty entered into with Serbia and Montenegro is uncertain. Montenegro has stated it will honor the treaty, but the United Kingdom has not yet confirmed the application of the treaty to Montenegro.

- (t) The 5% rate applies to patent royalties and motion picture royalties.
- (u) The 15% rate applies to cinematographic and television royalties.
- (v) The lower rate applies to the right to use industrial, commercial or scientific equipment.
- (w) The lower rate applies to copyright royalties. The higher treaty rate applies to all other royalties payable with respect to rights granted after the signing of the double tax treaty.
- (x) In the United Kingdom, this treaty is generally effective from 6 April 2012, but for withholding tax purposes, it is effective from 1 January 2013.

The United Kingdom has also entered into tax treaties with Algeria, Brazil, British Virgin Islands, Cameroon, Congo (Democratic Republic of), Iran and Lebanon. 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 Bahrain, Belgium, China and Ethiopia, but the treaties are not yet in force.

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**A. At a glance**

Corporate Income Tax Rate (%)	35 (a)
Corporate 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.

Foreign corporations generally are taxable in the United States on income that is effectively connected with a U.S. trade or business and on certain U.S.-source income. 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 and rates of tax on certain U.S.-source income are reduced or eliminated.

**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 may reduce AMT by up to 90% (subject to modifications; see Section C), compared to a potential reduction of 100% for regular tax purposes. Foreign tax credits may reduce AMT by up to 100%.

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. Subject to certain restrictions, 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 (the Act) 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
- 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.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, signed into law on 17 December 2010, provides 100% bonus depreciation for qualified property acquired after 8 September 2010 and before 1 January 2012, and placed in service by 1 January 2012 (or 1 January 2013, for longer production period property and certain aircraft).

**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.

The American Reinvestment and Recovery Act of 2009 and the Worker, Homeownership, and Business Assistance Act of 2009, extended the carryback period from two years to up to five years for most companies for certain 2008 or 2009 net operating losses. Special rules apply with respect to the 90% NOL limitation for AMT purposes, for life insurance companies and for certain “eligible small businesses.”

**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*) 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

Nature of tax	Rate (%)
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 a calculated amount (at least \$250,000 or \$150,000 for certain personal services corporations)	15
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 \$110,100 (for 2012); paid by	
Employer	7.65
Employee	7.65
(The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 provided a payroll and self-employment tax holiday during 2011 of two percentage points, reducing the social security contribution from 6.2% to 4.2%. As a result, for 2011, employees paid 4.2% on wages and self-employed individuals paid 10.4% on self-employment income up to the threshold. Congress subsequently extended the two percentage point social security contribution reduction for employees [to 4.2%] and self-employed individuals [to 10.4%] through the end of 2012.)	
Wages in excess of \$110,100 (for 2012; 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 as distributions.

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 has generally been 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 disqualified interest is deferred to the extent of any "excess interest expense." "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.

**Uncertain tax positions.** In 2010, the IRS issued new rules requiring certain corporate taxpayers to file a Schedule UTP (Uncertain Tax Position Statement) with their U.S. federal income tax return. Schedule UTP asks for information about uncertain tax positions "that affect the U.S. federal income tax liabilities of certain corporations that issue or are included in audited financial statements..." Corporations with total assets of \$100 million or more must file Schedule UTP beginning with the 2010 tax year. Schedule UTP applies to corporations with total assets of \$50 million or more beginning with the 2012 tax year and those with assets of \$10 million or more beginning with the 2014 tax year.

## F. Securities and Exchange Commission regulatory matters

**Accounting for income taxes.** Income tax accounting matters continue to receive a great deal of attention in the United States and globally. Accounting for income taxes remains a subject of focus for both standard setters and regulators. The U.S. Securities and Exchange Commission (SEC) staff continues to question registrants with respect to U.S. generally accepted accounting principles (GAAP) financial statement disclosures related to income taxes. Representatives of the SEC have specifically expressed concern about the transparency of the effect of foreign earnings on the effective tax rate and the effect on consolidated liquidity when a registrant intends to indefinitely reinvest foreign earnings.

**International Financial Reporting Standards.** At the December 2011 American Institute of Certified Public Accountants (AICPA) National Conference on Current SEC and Public Company Accounting Oversight Board (PCAOB) Developments, representatives from the SEC, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) all indicated that the SEC could incorporate IFRS into the U.S. financial system but retain U.S. GAAP. Support seems to be growing for a framework like the endorsement approach described in a May 2011 SEC Staff paper, retaining U.S. GAAP as the statutory basis for U.S. financial reporting, with a gradual transition incorporating international standards into U.S. GAAP. Representatives of the SEC and the FASB have both stated that the timing of convergence is not as important as establishing a strong framework for high-quality global accounting standards.

## G. Treaty withholding tax rates

The following are U.S. withholding tax rates for dividends, interest and royalties paid from the United States to residents of various treaty countries.

	Dividends %	Interest %	Patent and know-how royalties %
Australia	0/5/15 (a)	0/10 (b)	5
Austria	5/15 (c)	0	0
Bangladesh	10/15 (c)	5/10 (d)	10
Barbados	5/15 (c)	5	5
Belgium	0/5/15 (a)	0	0
Bulgaria	5/10 (c)	5	5
Canada	5/15 (c)	0	0/10 (e)
China	10	10	10
Cyprus	5/15 (c)	10	0
Czech Republic	5/15 (c)	0	0/10 (f)
Denmark	0/5/15 (a)	0	0
Egypt	5/15 (c)	15	15
Estonia	5/15 (c)	10	5/10 (g)
Finland	0/5/15 (a)	0	0
France	0/5/15 (a)	0	0 (h)
Germany	0/5/15 (a)	0	0
Greece	30	0/30 (i)	0
Hungary (j)	5/15 (c)	0	0
Iceland	5/15 (c)	0	0/5 (k)

	<b>Dividends</b>	<b>Interest</b>	<b>Patent and know-how royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
India	15/25 (c)	10/15 (l)	10/15 (m)
Indonesia	10/15 (c)	10	10
Ireland	5/15 (c)	0	0
Israel	12.5/25 (c)	10/17.5 (n)	10/15 (o)
Italy	5/15 (c)	0/10 (p)	0/5/8 (q)
Jamaica	10/15 (c)	12.5	10
Japan	0/5/10	10	0
Kazakhstan	5/15 (c)	10	10
Korea (South)	10/15 (c)	12	10/15 (r)
Latvia	5/15 (c)	10	5/10 (g)
Lithuania	5/15 (c)	10	5/10 (g)
Luxembourg	0/5/15 (c)(s)	0	0
Malta	5/10 (c)	10	10
Mexico	0/5/10 (u)	4.9/10/15 (v)	10
Morocco	10/15 (c)	15	10
Netherlands	0/5/15 (a)	0	0
New Zealand	0/5/15 (a)(c)	10	5
Norway (x)	15	0 (y)	0
Pakistan	15/30 (c)	30	0/30
Philippines	20/25 (c)	10/15 (z)	15/25 (aa)
Poland (bb)	5/15 (c)	0	10
Portugal	15 (cc)	10	10
Romania (dd)	10	10	10/15 (ee)
Russian Federation	5/10 (c)	0	0
Slovak Republic	5/15 (c)	0	0/10 (ee)
Slovenia	5/15 (c)	0/5	5
South Africa	5/15 (c)	0	0
Spain	10/15 (c)	10	5/8/10 (ff)
Sri Lanka	15	10	5/10 (gg)
Sweden	0/5/15 (a)	0	0
Switzerland	5/15 (c)	0	0
Thailand	10/15 (c)	10/15 (hh)	5/8/15
Trinidad and Tobago	10/25 (c)	15 (ii)	15
Tunisia	14/20 (c)	15	10/15 (jj)
Turkey	15/20 (c)	10/15 (hh)	5/10 (kk)
Ukraine	5/15 (c)	0	10
USSR (ll)	30	0	0
United Kingdom	0/5/15 (mm)	0 (nn)	0
Venezuela	5/15 (c)	4.95/10 (t)	5/10 (kk)
Nontreaty countries	30	30 (w)	30

Various exceptions (for example, for governmental entities and REITs) or conditions may apply (for example, a limitation-on-benefits provision), depending upon the terms of the particular treaty.

- (a) The 0% rate applies if dividends are paid by an 80%-owned U.S. corporation to its parent company (80% ownership must be for at least a 12-month period ending on the date the dividend is declared or the entitlement is determined) and if certain other conditions are met. The 5% rate applies to dividends paid to a company that directly owns at least 10% of the voting power (or share capital, if applicable) of the payer. The 15% rate applies to other dividends.
- (b) The 10% rate applies to all interest payments with the following exceptions:

- Interest derived by the government of a contracting state
  - Interest derived by certain financial institutions
- (c) The withholding rate is reduced to 5% (10% in the case of Bangladesh, Indonesia, Jamaica, Korea (South), Morocco, Spain, Thailand and Trinidad and Tobago; 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.
- (d) The 5% rate applies to interest paid to banks or financial institutions and interest related to the sale on credit of industrial, commercial or scientific equipment or of merchandise.
- (e) The 0% rate applies to royalties for 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.
- (f) The 0% rate applies to royalties paid for copyrights. The 10% rate applies to royalties paid for patents, trademarks, and industrial, commercial or scientific equipment or information.
- (g) The 5% rate applies to royalties paid for the use of commercial, industrial or scientific equipment.
- (h) The 0% rate applies to royalties paid for copyrights of literary, artistic or scientific works, cinematographic films, sound or picture recordings, or software.
- (i) The exemption does not apply if the recipient controls directly or indirectly more than 50% of the voting power in the paying corporation.
- (j) The United States and Hungary have signed a new income tax treaty, which will enter into force on the exchange of the instruments of ratification. This treaty generally retains the rates of the old treaty and includes a new limitation-on-benefits provision.
- (k) The treaty provides for a general exemption from withholding tax on royalties. A 5% withholding tax rate applies to royalties for trademarks and motion pictures.
- (l) The 10% rate applies to interest paid on loans granted by banks carrying on bona fide banking business and similar financial institutions.
- (m) The 10% rate generally applies to royalties for the use of industrial, commercial or scientific equipment.
- (n) The 10% rate applies to interest on bank loans. The 17.5% rate applies to other interest.
- (o) The 10% rate applies to copyright and film royalties.
- (p) The exemption applies to the following:
- Interest paid to qualified governmental entities, provided the entity owns, directly or indirectly, less than 25% of the payer of the interest
  - Interest paid with respect to debt guaranteed or insured by a qualified governmental entity
  - Interest paid or accrued with respect to the sale of goods, merchandise or services
  - Interest paid or accrued on a sale of industrial, commercial, or scientific equipment
- (q) The 0% rate applies to royalties paid for the use of certain copyright materials. The 5% rate applies to royalties paid for the use of computer software and industrial, commercial or scientific equipment. The 8% rate applies in all other cases.
- (r) The 10% rate applies to royalties paid for copyrights or rights to produce or reproduce literary, dramatic, musical, or artistic works and to royalties paid for motion picture films.
- (s) The rate is 0% for dividends paid by a company resident in Luxembourg if the beneficial owner of the dividends is a company that is a resident of the United States and if, during an uninterrupted period of two years preceding the date of payment of the dividends, the beneficial owner of the dividends has held directly at least 25% of the voting shares of the payer.
- (t) The 4.95% rate applies to interest paid on loans made by financial institutions and insurance companies. The 10% rate applies to other interest.
- (u) The 0% rate applies to the following dividends:
- Dividends paid to certain recipients that own at least 80% of the voting shares of the payer of the dividends
  - 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).

- (v) 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.
- (w) Interest on certain "portfolio debt" obligations issued after 18 July 1984 and noneffectively connected bank deposit interest are exempt from withholding tax.
- (x) The United States and Norway initialed a new income tax treaty in 2006. As of 1 January 2011, the treaty had not yet been signed.
- (y) The general withholding tax 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 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.
- (z) The 10% rate applies to interest derived by a resident of one of the contracting states from sources in the other contracting state with respect to public issuances of bonded indebtedness.
- (aa) The tax imposed by the source state may not exceed, in the case of the Philippines, the lowest of the following:
- 25%
  - 15% if the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities
  - The lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state
- (bb) In November 2005, U.S. government officials stated that preliminary discussions on a new tax treaty had begun with Poland. However, as of 1 January 2012, a new treaty had not yet been signed.
- (cc) A reduced rate may apply if the beneficial owner of the dividend is a Portuguese company that owns at least 25% of the capital of the dividend-paying company.
- (dd) In November 2005, preliminary discussions on a new tax treaty began with Romania. As of 1 January 2012, a new treaty had not yet been signed.
- (ee) The lower rate applies to cultural royalties, which are defined as payments for the right to use copyrights of literary, artistic or scientific works, including cinematographic films.
- (ff) The 5% rate applies to royalties paid for copyrights of musical compositions or literary, dramatic or artistic works. The 8% rate applies to royalties paid for the following:
- Motion picture films, and films, tapes and other means of transmission or reproduction of sounds
  - Industrial, commercial or scientific equipment
  - Copyrights of scientific works
- (gg) The 5% rate applies to rent paid for the use of tangible movable property.
- (hh) The 10% rate applies to interest on loans granted by financial institutions. The 15% rate applies to other interest.
- (ii) This rate applies to interest paid to banks and financial institutions.
- (jj) The 10% rate applies to the following:
- Royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment
  - Remuneration for the performance of accessory technical assistance with respect to the use of the property or rights described above, to the extent that 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 following:
- 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
  - Information relating to industrial, commercial or scientific experience
- (kk) The 5% rate applies to payments for the right to use industrial, commercial or scientific equipment. The 10% rate generally applies to other royalties.
- (ll) 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 tax rates under these treaties are listed in the above table.

- (mm) 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.
  - 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.
- (nn) Withholding tax may be imposed at the full domestic rate on interest paid in certain circumstances.

The United States and Chile signed their first income tax treaty in February 2010. It includes a general limitation-on-benefits provision and reductions in withholding rates. The treaty has not yet been ratified.

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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 (c)
Interest	11 (c)
Royalties from Patents, Know-how, etc.	11 (c)
Branch Remittance Tax	11 (c)(d)
Net Operating Losses (Years) (e)	
Carryback	2
Carryforward	20

- (a) This is the maximum rate. The rate includes a 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) Under certain circumstances, these taxes may not apply to U.S. corporations doing business in the U.S. Virgin Islands.
- (d) 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).
- (e) These periods apply to losses incurred in tax years beginning after 5 August 1997. A three-year carryback period is available in certain circumstances. Small businesses may elect to carry back net operating losses incurred in 2008 for up to the five preceding years.

### 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.

*Development of renewable and alternative energy-generation sources.* Individuals and businesses that install a new solar water heating system, wind energy system, photovoltaic energy system or other renewable energy system may claim a rebate from the Virgin Islands Energy Office that ranges, subject to certain limitations, from 25% to 70% of the actual cost of the equipment, depending on the type of system and on the type of property on which it is installed. In addition, the new legislation provides that equipment or component parts brought into the U.S. Virgin Islands for the purpose of manufacturing solar water heaters or wind or solar energy systems are exempt from the payment of custom duties and excise taxes. Also, revenues derived from the installation or construction of a renewable or alternative energy electric power or production plant or device are exempt from the gross receipts tax.

**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 following table 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; imposed on the assessed value of the property as determined by the tax assessor	
Unimproved noncommercial property	0.49
Residential property	0.38
Commercial property	0.71
Timeshares	1.4
(Legislation approved during 2010 authorizes the Tax Assessor of the U.S. Virgin Islands to issue real property tax bills retroactive to the 2006 property tax year and subsequent years using the 1998 tax rates and assessment values. The legislation prohibits the levying of penalties and interest for the 2006, 2007 and 2008 property tax years.)	
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

<b>Nature of tax</b>	<b>Rate (%)</b>
Payroll taxes	
Federal unemployment insurance (FUTA), imposed on first \$7,000 of wages	6
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 \$110,100 (for 2012); paid by	
Employer	7.65
Employee	4.2
Wages in excess of \$110,100 (for 2012); 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 and resident individuals. 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. Dividends subject to withholding tax cannot exceed the taxable profit of the company.

**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
- 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.

In general, payments to nonresidents are fully deductible as expenses if the effective income tax rate of the country of the recipient is 25% or higher (to be proved through a specific certificate). 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 nonresident withholding tax rate of 12% plus the effective income tax rate of the country of the nonresident to the corporate income tax rate of 25% in Uruguay. If the nonresident withholding tax of 12% applies, the minimum percentage of deduction 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.

Asset	Rate (%)
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.

Nature of tax	Rate (%)
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

<b>Nature of tax</b>	<b>Rate (%)</b>
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 (the current discount is 1%)	
Banks and credit card corporations	2.8
Others	1.5
Social security contributions, on salaries and wages; imposed on	
Salaries and wages up to approximately US\$3,700; paid by	
Employer; standard rate	12.625
Employee	18.125 to 21.125
Salaries and wages exceeding approximately US\$3,700; paid by	
Employer	5.125
Employee	3.125 to 6.125

### **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. Nonresidents 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.

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	%	%	%
Germany	15	15	15 (a)
Hungary	15	15	15
Mexico	5	10	10
Spain	0/5	0/10	5/10
Nontreaty countries	7 (b)	12	12 (b)

(a) For technical assistance payments, the rate is 10%.

(b) See Section B.

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## **Uzbekistan**

(Country code 998)

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*This chapter reflects the tax law as of 1 December 2011. At the time of writing, changes to the Uzbek Tax Code and other tax legislation, which were intended to be effective from 1 January 2012, were being considered. Because this chapter does not reflect the measures in the 2012 tax legislation, readers should obtain updated information before engaging in transactions.*

## A. At a glance

Corporate Profits Tax Rate (%)	9 (a)
Capital Gains Tax Rate (%)	9 (a)
Permanent Establishment Tax Rate (%)	9 (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 15%.
- (b) This tax is imposed on the net profits of permanent establishments after deduction of the profits tax.
- (c) The withholding taxes are generally 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 taxable profits of a PE should not be less than 10% of deductions). 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 9%. This rate also applies to Uzbek enterprises with foreign participation and to PEs of foreign companies. For commercial banks, the profits tax rate is 15%.

PEs are also subject to a 10% tax on their net 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 generally included in taxable profits and are subject to tax at the regular corporate tax rate. Capital losses are generally 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 by the deadline for filing the tax declarations. Quarterly estimates of the tax payable must be made by the 10th day of the 1st 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\$7,000) 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.

### 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 loans (in excess of normal loan interest rate)
- Losses resulting from misappropriations of funds or assets
- Audit expenses, if an annual audit was conducted more than once for the same period
- One-off bonuses to employees with certain exceptions
- Charitable donations
- Litigation expenses
- Penalties

**Special deductions.** Taxable profits may be reduced by certain special deductions, including the following:

- Amounts reinvested in main production in the form of new construction and reconstruction of buildings and facilities used for production needs and new technological equipment (less current depreciation) over a certain time period, up to 30% of taxable profits
- Charitable donations of up to 2% 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 depreciation rates in Uzbekistan.

Assets	Rate (%)
Buildings and structures	5
Trains, ships, airplanes, pipelines, communication equipment and electric power lines and equipment	8
Production machinery and equipment	15
Cars, computers and office equipment	20
Perennial plants	10
All other assets	15

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	

<b>Nature of tax</b>	<b>Rate</b>
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 components and on waste derived from the extraction or processing of natural resources	
Sales	2.6% to 30%
Waste	0.78% to 9%
Excess profits tax; imposed on the difference between the actual net sales price and the established threshold price for certain natural resources and products	Various
Tax on signing and commercial discovery bonuses for subsurface users	Various
Road Use Fund contribution; imposed on sales turnover, excluding VAT, and on purchases of motor vehicles	
General rate on turnover	1.4%
Turnover from transportation activities	2.5%
Turnover from intermediary activities	1%
Purchases of cars	Various (minimum rate of 6%)
Purchases of other vehicles	Various (minimum rate of 20%)
Water use tax; rates per cubic meter	
Surface water	UZS 29.8 (approximately US\$0.0168)
Underground water	UZS 37.9 (approximately US\$0.0214)
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 40,419,088 (approximately US\$22,797)
School Education Development contribution; imposed on sales turnover, excluding VAT	0.5%
Social fund contributions; foreign citizens are exempt	
Pension Fund; paid by	
Employers; imposed on sales, excluding VAT	1.6%
Employees (withheld from salaries of local employees)	4.5%
Unified Social Payment; payable by employers on the payroll of its local employees	25%
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
- 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.

Payee resident in	Dividends (n)	Interest (n)	Royalties
	%	%	%
Austria	15 (a)	10	5
Azerbaijan	10	10	10
Bahrain	8	8	8
Belarus	15	10	15
Belgium	15 (b)	10	5
Bulgaria	10	10	10
Canada	15 (b)	10	10 (c)
China	10	10	10
Czech Republic	10	5	10
Finland	15 (b)	5	10 (d)
France	10 (a)	5 (m)	0
Georgia	15 (e)	10	10
Germany	15 (e)	5	5 (f)
Greece	8	10	8
Hungary	10	10	10
India	15	15	15
Indonesia	10	10	10
Iran	8	10	5
Israel	10	10	10 (c)
Italy	10	5	5
Japan (g)	15	10	10 (h)
Kazakhstan	10	10	10
Korea (South)	15 (e)	5	5 (i)
Kuwait	10 (e)	8	20
Kyrgyzstan	5	5	15
Latvia	10	10	10
Lithuania	10	10	10

Payee resident in	Dividends (n)	Interest (n)	Royalties
	%	%	%
Luxembourg	15 (e)	10	5
Malaysia	10	10	10
Moldova	15 (a)	10	15
Netherlands	15 (e)	10	10
Oman	7	7	10
Pakistan	10	10	15
Poland	15 (j)	10	10
Romania	10	10	10
Russian Federation	10	10	0
Saudi Arabia	7	7	10
Singapore	5	5	8
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
  - 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.

# Venezuela

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**A. At a glance**

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 (g)	
Paid to Residents (g)	
Individuals	1
Corporations	2
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	
Individuals	1
Corporations	2
Paid to Nonresidents (m)	
Individuals	34 (n)
Corporations	34 (o)
Technological Services	
Paid to Residents	
Individuals	1
Corporations	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 24 February 2011, the value of a tax unit is Bs.F 76. 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.F 6,333. The tax is imposed on the payment minus Bs.F 190.
- (d) This withholding tax applies to payments over Bs.F 25.
- (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 24 February 2011, the value of a tax unit is Bs.F 76. 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 their 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*), 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*), 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*) 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 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	12
Municipal tax; business activity tax, usually based on gross receipts or sales; rate varies depending on the industrial or commercial activity and the municipal jurisdiction	0.5 to 10
Social security contributions, on monthly salary of each employee, up to five minimum salaries; paid by	
Employer	11/12/13
Employee	4

<b>Nature of tax</b>	<b>Rate (%)</b>
National Institute of Cooperative Education; contributions required if employer has five or more employees; paid by	
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 integral salary (any remuneration, benefit or advantage received by an employee in consideration for services rendered, provided it can be evaluated in terms of cash value) 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**

	<b>Dividends</b>	<b>Interest (a)</b>	<b>Royalties</b>
	%	%	%
Austria	5/15 (c)	4.95/10 (m)	5
Barbados	5/10 (e)	5/15 (o)	10 (s)
Belarus	5/15 (b)	4.95/5 (ll)	5/10 (mm)
Belgium	5/15 (b)	10	5
Brazil	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)

	<b>Dividends</b>	<b>Interest (a)</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
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)
Italy	10	10	7/10 (z)
Korea (South)	5/10 (d)	5/10 (o)	5/10 (aa)
Kuwait	5/10 (d)	5	20
Malaysia	5/10 (d)	4.95/15 (nn)	10 (oo)
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)
Qatar	5/10 (d)	4.95/5 (pp)	5
Russian Federation	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 Arab Emirates (qq)	5/10 (d)	10	10
United Kingdom	0/10 (g)	5	5/7 (hh)
United States	5/15 (d)	0/4.95/10 (p)	0/5/10 (bb)
Vietnam	5/10 (d)	4.95/10 (n)	10
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% of 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 10% of the 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.
  - 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
  - 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)
  - 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:
- Royalties paid 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
  - Royalties 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
  - Copyrights with respect to literature, arts or sciences, motion pictures, or movies and tapes for radio or television broadcasting
- (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
  - 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.
- (ll) The 4.95% rate applies to interest paid to financial institutions. The 5% rate applies to other interest payments.
- (mm) The 5% rate applies to royalties paid for the use of, or the right to use, copyrights of scientific works, software and trademarks, and to payments for the use of, or the right to use, equipment and transportation vehicles. The 10% rate applies to other royalties.
- (nn) The 4.95% rate applies to interest paid to banks. The 15% rate applies to other interest payments.
- (oo) The 10% rate applies to royalties paid for the use of, or the right to use, copyrights of literary, artistic or scientific works, cinematographic films, patents, trademarks, designs or models, plans, or secret formulas or processes, and to payments for the use of, or the right to use, industrial, commercial, or scientific equipment or for information (know-how) concerning industrial, commercial or scientific experience. It also applies to gains derived from the alienation of such rights or property to the extent that such gains are contingent on the productivity, use or disposition of such property.
- (pp) The 4.95% rate applies to interest paid to banks. The 5% rate applies to other interest payments.
- (qq) This treaty is effective from 1 January 2012.

Venezuela has signed other tax treaties that cover only air and maritime transportation.

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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

Corporate Income Tax Rate (%)	25 (a)
Capital Gains Tax Rate (%)	25 (b)
Branch Tax Rate (%)	25
Withholding Tax (%)	
Dividends	0
Interest	5
Royalties	10
Branch Remittance Tax	0
Net Operating Losses (Years)	
Carryback	0
Carryforward	5 (c)

- (a) Petroleum and mining companies are subject to tax at a rate ranging from 32% 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 capital or shares in an entity are subject to tax at a rate of 25%. Transfers of securities by foreign investors are subject to presumptive tax of 0.1% on total sales proceeds. For details, see Section B.
- (c) See Section C.

## B. Taxes on corporate income and gains

**Corporate income tax.** The following types of enterprises are subject to corporate income tax:

- Enterprises established under the Law on Enterprises, the Law on State Enterprise, the Law on Foreign Investment in Vietnam, the Law on Investment, the Law on Credit Organisations, the Law on Insurance Business, the Law on Securities, the Law on Oil and Gas, the Trade Law and other legal entities including joint stock companies, limited liability companies, partnerships, private businesses, state-owned businesses, law offices, private public notary offices, parties to business cooperation contracts, parties to oil and gas product sharing contracts, oil and gas joint ventures and joint operation companies
- Public and nonpublic organizations engaged in business
- Organizations established under the Law on Cooperatives
- Businesses established under foreign laws that have a permanent establishment in Vietnam
- Other organizations conducting production and business activities that generate taxable income

**Rates of corporate tax.** The standard corporate income tax rate is 25% unless tax incentives apply.

The rate of corporate income tax applicable to activities of exploration and exploitation of oil and gas and other precious natural resources ranges from 32% to 50%. The rate varies according to the specific project and business establishment.

### Tax incentives

*Incentive tax rates.* Preferential tax rates of 10% or 20% may be available to eligible foreign investment projects in industries or locations that are encouraged by the government.

A 10% rate for the 15-year period beginning with the first year of revenue may be available to the following:

- Newly established enterprises engaged in investment projects in areas with extremely difficult socioeconomic conditions and in economic zones and high-technology zones established by decisions of the prime minister
- Newly established enterprises that are engaged in the production of software products, investment projects in the sectors of high technology, scientific research and technological development or investment projects involving the development of especially important infrastructure facilities of the state

A 10% rate applies for the entire period of operation for enterprises operating in the sectors of education and training, occupational training, health care, culture, sports, environment and publishing. However, this incentive is subject to detailed conditions provided separately by the prime minister.

A 20% rate for the 10-year period beginning with the first year of revenue may apply to newly established enterprises engaged in investment projects in areas with difficult socioeconomic conditions. A 20% rate for the entire operational period may apply to agricultural service cooperatives, people's credit funds and micro-financial institutions established under the Vietnamese laws on credit institutions.

After the expiration of the period for the tax-incentive rate, the standard rate of 25% applies.

Income from mining activities of enterprises established and licensed to carry out mining activities from 1 January 2009 is not eligible for corporate income tax incentives. This does not retroactively affect any incentives granted to such enterprises established before 1 January 2009.

If within an assessment period, an enterprise has both incentivized activities and normal activities, it must conduct separate accounting for income from each activity to declare and pay tax separately. Otherwise, taxable income must be prorated according to the revenue ratio of each activity.

Income and losses from incentivized activities and normal activities (except for transfers of property, transfers of projects and transfers of mineral exploratory, mining and processing rights) may be netted against each other before the tax rate of the activity with the highest amount of income is applied.

Tax incentives previously granted as a result of the export ratio are repealed, effective from 1 January 2012. Affected taxpayers can adopt either tax incentives based on the prevailing regulations effective at the time they were licensed or those effective from 31 December 2011. Taxpayers are required to notify the tax authorities regarding the tax incentive option selected.

*Tax exemptions and tax reductions.* The following enterprises are exempt from corporate income tax for a maximum period of four years and to a 50% reduction of the amount of corporate income tax payable for a maximum period of nine subsequent years:

- Newly established enterprises engaged in investment projects in areas with especially difficult socioeconomic conditions or in economic zones and high-technology zones established under decisions of the prime minister
- Newly established enterprises that are engaged in investment projects in various sectors, including high technology, scientific research and technological development or that are engaged in investment projects involving the production of software projects or the development of water plans, power plans, water supply and irrigation systems, bridges, railways, airports, seaports, river ports or other important infrastructure projects, as decided by the prime minister
- Newly established enterprises operating in the sectors of education and training, occupational training, health care, culture, sport and the environment in areas with especially difficult socioeconomic conditions

Enterprises operating in sectors mentioned in the last bullet above in areas that do not have particularly difficult socioeconomic conditions are entitled to tax exemption of four years and a tax reduction of 50% for five subsequent years.

Other newly established enterprises engaged in investment projects in areas with difficult socioeconomic conditions are exempt from corporate income tax for a period of two years and a 50% reduction of the amount of corporate income tax payable for a maximum period of four subsequent years.

The duration of the tax exemption and reduction described above is calculated from the first year in which the enterprise has taxable income. If an enterprise does not have taxable income in the first three years in which it has turnover, the period for the tax exemption and reduction is calculated from the fourth year.

**Capital gains.** Capital gains derived from sales of fixed assets are treated as taxable income.

Gains derived from sales of shares or assignments of capital in enterprises are subject to tax at a rate of 25%. The taxable income equals the transfer price less the sum of the purchase price of the transferred capital and expenses incurred with respect to the transfer.

Foreign investors transferring securities (for example, listed shares of public companies) are subject to presumptive tax at a rate of 0.1% on total sale proceeds, regardless of whether the transfer is profitable. However, securities transfers by individuals from 1 August 2011 through 31 December 2012 enjoy a 50% tax reduction.

**Administration.** Enterprises normally use the calendar year as their tax year. Enterprises that have their own particular characteristics of operational organization may choose a financial year of 12 months according to the Gregorian calendar and they must notify the local authorities of such 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.

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 was abolished, effective from 1 January 2004. As a result, dividends and branch remittances are not subject to withholding tax.

**Withholding taxes on interest and royalties.** The rate of withholding tax on interest paid under loan contracts signed on or after 1 January 1999 is reduced from 10% to 5%, effective from 1 March 2012.

A withholding tax at a rate of 10% is imposed on royalties paid to 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 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.

An enterprise may deduct expenses if the following conditions are satisfied:

- The expenses arose in and are related to the production and business activities of the enterprise.
- The expenses are accompanied by complete invoices and source vouchers as required by law.

Certain expenses are not deductible in determining taxable income, including the following:

- Expenses that do not satisfy both conditions mentioned in the preceding paragraph.
- Provisions that do not conform to the regulations of the Ministry of Finance.
- Depreciation of fixed assets that does not conform to the regulations of the Ministry of Finance.
- Accrued expenses that are not in compliance with regulations except for accrued expenses corresponding to taxable turnover that has been recognized.
- The value of damaged goods resulting from expiration or biochemical processes that exceeds the norms specified by the enterprise.
- Bonuses and life insurance expenses for employees that are not clearly stated in the labor contracts, the collective labor contracts, the financial regulations of the company or the reward regulations promulgated by the chairman of the board of management.
- Interest payments on loans corresponding to the unpaid portion of charter capital in accordance with the capital contribution schedule provided in the enterprise charter.
- Interest payments on loans borrowed from lenders that are not credit institutions or economic organizations that exceed 150% of the basic interest rate quoted by the State Bank of Vietnam at the time of the loan agreement.
- Expenses for advertising, marketing, promotion and broker's commissions (excluding insurance brokerage, commissions provided by the Law on Insurance Business, commissions for agents who sell goods at the prices stipulated by their principals and commissions for distributors of multi-level marketing companies), expenses for receptions, formal occasions and conferences, expenses for marketing support, expenses for costs support, payment discounts and expenses for complimentary newspapers by press agencies (except for complimentary newspapers given to wounded and sick soldiers, and soldiers in islands, remote areas and areas with special difficult conditions), to the extent that these expenses exceed 10% of the "total amount of deductible expenses." For the first three years from the date of establishment of newly established enterprises, the percentage is increased to 15%. For purposes of calculating the limit on the deductibility of expenses, the "total amount of deductible expenses" does not include the expenses mentioned above or the purchase price of goods in the case of trading activities.
- Expenses sourced from other funding and expenses paid from the Science and Technology Development Fund of the enterprise.

- The portion of expenses that are permitted to be recovered and that exceed the ratio provided in an approved petroleum contract. If a petroleum contract does not provide the recoverable expenses ratio, the ratio is deemed to equal 35%.
- The portion of business management expenses allocated by a foreign company to its resident establishment in Vietnam (for example, head office charges allocated to the Vietnam branch) that exceeds the level allowed under the regulations.
- Input value-added tax that has been credited or refunded, corporate income tax (except for the corporate income tax that a Vietnamese company pays on behalf of a foreign contractor under a net contract) and personal income tax (unless the employer pays net salary to employees).
- Expenses that do not correspond to taxable revenue.
- Exchange-rate loss as a result of the revaluation of the year-end balance of cash on hand, cash at a bank, cash in transit and receivables in foreign currencies, except for the revaluation of payables in foreign currencies.
- Exchange-rate loss arising in the process of capital construction of fixed assets that have not yet been placed in operation.

**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.

Asset	Years
Intangible assets	20*
Buildings and factories	5 to 50
Tools and machinery	3 to 20
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. For cars with nine seats or less purchased by enterprises for business other than passenger transportation, hotel, or tourism, the depreciable amount is capped at VND 1,600,000,000 (US\$80,000).

**Relief for losses.** Enterprises that incur losses may carry forward the losses to the following five years and claim such losses as deductions from taxable income. Losses must be wholly carried forward to consecutive years (including the year of a tax holiday).

Enterprises that incur losses from real property transfers may carry forward the losses to offset only the assessable income from such activities.

Carrybacks of losses are not allowed.

**Groups of companies.** Dependent production establishments of a company operating in different areas of Vietnam must declare and pay tax with the local tax authorities where the dependent establishments' offices are located based on the ratio of the expenses of the dependent establishment to the total expenses of the company. The offsetting of losses and profits between parents and subsidiaries is not allowed.

#### D. Other significant taxes

The following table summarizes other significant taxes.

Nature of tax	Rate
Value-added tax (VAT), on all goods and services consumed in and imported into Vietnam, including goods and services subject to special consumption tax, except for nontaxable 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 and air conditioners, and various services including casinos, betting, golf courses and various places of entertainment; for domestically produced goods, taxable value equals the manufacturer's selling price (without VAT), divided by one plus the tax rate; for imported goods, taxable value equals the import dutiable value plus import duty	10% to 70%
Social insurance, health insurance and unemployment insurance contributions, on salaries (generally applicable to Vietnamese employees only); paid by Employer	
Social insurance; 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	17%
(The rate of 17% consists of a 3% contribution to the maternity and illness fund, a 1% contribution to the labor and professional accident fund and a 13% contribution to the pension and death fund. The contribution to the pension and death fund increases by one percentage point every two years beginning in 2010 until it reaches the rate of 14%.)	
Health insurance; calculated on the same base as social insurance	3%
Unemployment insurance	1%
Employee	
Social insurance	7%

Nature of tax	Rate
(The contribution increases by one percentage point every two years beginning in 2010 until it reaches the rate of 8%.)	
Health insurance	1.5%
Unemployment insurance	1%
Foreign contractor tax; rate depends on type of business activity	Various
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%
Nonagricultural land use tax; effective from 1 January 2012; taxable objects include residential land in all areas and land used for business purposes, except for certain cases	
Residential land	0.03% to 0.15%
Nonagricultural land used for business purposes	0.03%
Land not used in accordance with granted purposes	0.15%
Environmental Tax; taxable objects consist of petroleum, oil, lubricants, black coal, hydrochlorofluorocarbon (HCFC) solutions, taxable plastic bags, herbicide termite insecticides, forest products protective agents and warehouse insecticides	
Petroleum, oil, and lubricants	VND 300 to VND 1,000 per liter/kilogram
Black coal	VND 10,000 to VND 50,000 per ton
HCFC solution	VND 1,000 to VND 5,000 per kilogram
Taxable plastic bags	VND 40,000 per kilogram
Herbicide (restricted use category)	VND 500 per kilogram
Termite insecticide (restricted use category)	VND 1,000 per kilogram
Forest products protective agents (restricted use category)	VND 1,000 per kilogram
Warehouse insecticides (restricted use category)	VND 1,000 per kilogram
Natural Resources Tax (NRT); payable by industries exploiting Vietnam's natural resources; taxable objects include metallic minerals, nonmetallic minerals, products of natural forests, natural marine products, natural mineral water, other natural resources and petroleum; tax base for NRT calculation includes the output of royalty-liable natural resources, royalty-liable price of a unit of natural resource and royalty rate	

Nature of tax	Rate
Metallic minerals	10% to 15%
Nonmetallic minerals	3% to 22%
Products of natural forests	5% to 35%
Natural marine products	2% to 10%
Natural mineral water and natural water	1% to 8%
Other natural resources	10% to 20%
Crude oil	
Encouraged investment projects	7% to 23%
Other projects	10% to 29%
Natural gas and coal gas	
Encouraged investment projects	1% to 6%
Other projects	2% to 10%

## 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 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
- 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
Austria	5/10/15 (a)	10	10
Bangladesh	5	5	5
Belarus	15	10	15
Belgium	5/10/15 (a)	10	15
Brunei Darussalam	10	10	10
Bulgaria	15	10	15
Canada	5/10/15 (a)	10	7.5/10

	<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>
	<b>%</b>	<b>%</b>	<b>%</b>
China	10	10	10
Cuba	5/10/15 (a)	10	10
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
Hong Kong SAR	10	10	7/10
Hungary	10	10	10
Iceland	10/15 (a)	10	10
India	10	10	10
Indonesia	15	15	15
Ireland	5/10	10	5/10/15
Israel	10	10	5/15
Italy	5/10/15 (a)	10	7.5/10
Japan	10	10	10
Korea (North)	10	10	10
Korea (South)	10	10	5/15
Kuwait	10/15	15	20
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
Oman	5/10/15 (a)	10	10
Pakistan	15	15	15
Philippines	10/15 (a)	15	15
Poland	10/15 (a)	10	10/15
Qatar	5/12.5	10	5/10
Romania	15	10	15
Russian Federation	10/15 (a)	10	15
Saudi Arabia	5/12.5	10	7.5/10
Seychelles	10	10	10
Singapore	5/7/12.5 (a)	10	5/15
Slovak Republic	5/10	10	5/10/15
Spain	7/10/15 (a)	10	10
Sri Lanka	10	10	15
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 Arab Emirates	5/15	10	10
United Kingdom	7/10/15 (a)	10	10
Uzbekistan	15	10	15
Venezuela	5/10 (a)	10	10
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, Egypt, Kazakhstan, Morocco, Mozambique and Tunisia, but these treaties have not yet been ratified or have not yet taken effect.

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## 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 or 10 (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 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 income	35
Mobile telephone operators	
Profits up to K 250 million	35
Profits exceeding K 250 million	40
Royalties	35 (a)
Income from mining operations	30 (b)
Trading and other sources	35

(a) A 15% final withholding tax is imposed on royalties paid to nonresidents.

(b) A mining operation is any operation carried out under a mining right referred to in Section 6 of the Mines and Minerals Development Act, but does not include any operations carried out under a prospecting permit or prospecting license or any operations involving only mineral processing.

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*) 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 will run from 1 January to 31 December. However, the 2012 tax year will run for nine months from 1 April 2012 to 31 December 2012. Annual tax returns must be filed by 30 June of the following tax year.

Companies must make four advance payments of tax, which are due on 14 April, 14 July, 14 October and 14 January. 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 December.

**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 20 million [US\$4,000])	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. Mining operations and companies operating in the hydro- and thermo-generation sector may

carry forward losses for a period of 10 years. 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	16
National Pensions Scheme Authority (NAPSA; social security system) contributions on monthly wages; maximum contribution of K 391,481.80 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	5
Royalty, on the extraction, production and selling of ore	6

#### 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	15	15	15
Tanzania	15	15	15	15
Uganda	15	15	15	15
United Kingdom	5/15	10	10	0
Nontreaty countries	15	15	15	15

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**A. At a glance**

Corporate Income Tax Rate (%)	25 (a)(b)
Capital Gains Tax Rate (%)	1/5/20 (c)
Capital Gains Withholding Tax Rate (%)	1/5/15 (d)
Branch Tax Rate (%)	25 (a)(b)
Withholding Tax (%)	
Dividends	10/15 (e)
Interest Received by Residents	
Paid by Banks, Other Financial Institutions and Building Societies	15 (f)
Accruing from Treasury Bills, Bankers' Acceptances and Discounted Instruments Traded by Financial Institutions	15 (g)
Royalties	15 (h)
Remittances	15 (i)
Fees	15 (j)
Contract Payments	10 (k)
Branch Remittance Tax	15 (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 listed and unlisted marketable securities. See Section B.
- (d) A capital gains withholding tax is imposed on the proceeds from sales of listed and unlisted marketable securities and immovable property. The 1% withholding tax on the disposal of securities listed on the Zimbabwe Stock Exchange is a final tax. See Section B.
- (e) The 10% rate applies to dividends paid by companies listed on the Zimbabwe Stock Exchange to resident individuals and nonresidents. The 15% rate applies to other dividends paid to resident individuals and 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
  - 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 a specified threshold to resident suppliers who cannot provide a tax-clearance certificate.
- (l) Only remittances of head office expenditures are subject to a 15% withholding tax.
- (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 in foreign currency on all amounts (other than capital) received or accrued in foreign currency from a Zimbabwean source or a deemed 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 taxpayers that are ordinarily resident in Zimbabwe are deemed to be from a source in Zimbabwe. A corporation is ordinarily resident in Zimbabwe if it is managed and controlled in Zimbabwe.

**Rates of corporate tax.** Resident and nonresident companies are subject to income tax at a rate of 25%. Effective from 1 January 2011, resident companies are subject to income tax at a rate of 20% on gross foreign dividends receivable.

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.

<b>Type of enterprise</b>	<b>Rate (%)</b>
Licensed investors operating in export-processing zones and licensed before the year of assessment beginning on 1 January 2010	
First five years	0
Thereafter	15
Mining operations	25
Special mining lease operations	15
	(plus additional profits tax)
Build-own-operate-transfer (BOOT) and build-operate-transfer (BOT) projects	
Years 1 through 5	0
Years 6 through 10	15
Year 11 and thereafter	25*
Industrial park developers that commenced operations before the year of assessment beginning 1 January 2010	
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 15%. A final withholding tax at a rate of 15% 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 that 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 concessions.* In the past, export-processing zones were designated in the major business centers and border areas of Zimbabwe. Concessions have recently been restricted to licenses issued before 1 January 2007 to certain investors to operate in these zones. The concessions are in the form of reduced rates 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 remittances, fees and royalties
- Customs duty
- 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.** Withholding tax is imposed on the gross proceeds derived from sales of listed marketable securities and immovable property. The withholding tax rates on the disposal of assets acquired before 1 February 2009 are 1% for listed marketable securities and 5% for unlisted marketable securities and immovable property. The withholding tax rates on disposal of assets acquired on or after 1 February 2009 are 1% for listed marketable securities, 5% for unlisted marketable securities and 15% for immovable property. This tax is offset against any capital gains tax assessed on the transaction.

Capital gains derived from the disposal of immovable property and unlisted securities acquired before 1 February 2009 are taxed at the greater of 5% of the gross sale proceeds and the amount of the withholding tax withheld on disposal.

Capital gains derived from disposals of immovable property and unlisted marketable securities acquired after 1 February 2009 are taxed at a rate of 20%. Gains are determined by deducting from the selling price the cost plus an allowance of 2.5% per year on the cost 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. Capital gain withholding tax is offset against any capital gains tax assessed on the transaction.

Capital gains derived from the disposal of listed securities are exempt from capital gains tax, effective from 1 August 2009, but the gross sale proceeds are subject to 1% capital gains withholding tax which is a final tax.

**Administration.** Zimbabwe's tax year ends on 31 December. Tax returns must be filed on 30 April. The Revenue Authority prefers that companies use accounting years ending in September, October, November or December of a given tax year. Self-assessment has been introduced for specified taxpayers.

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%
- 20 December: 35%

Penalties can be imposed for late or incorrect returns, and late payments are subject to interest at a rate of 10% per year.

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 10% withholding tax is imposed on dividends paid by companies listed on the Zimbabwe Stock Exchange to resident individuals and nonresidents. A 15% withholding tax is imposed on other dividends paid to resident individuals and nonresidents. Gross 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
- 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 15%. 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 a specified amount
- Cost of attending trade missions and conventions in excess of a specified amount
- Rent or repairs for premises not occupied for purposes of trade
- Payments in restraint of trade
- Entertainment expenses
- Payments in excess of a specified amount for the lease of passenger motor vehicles (as defined)
- Interest relating to excess debt in a company with a debt-to-equity ratio that exceeds 3:1
- 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 a specified threshold for the construction, maintenance or operation of hospitals and schools run by the state,

local authorities or religious organizations and donations 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 25% 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 three 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 claimed, 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.

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 following table 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 a specified threshold must register; the annual threshold is currently US\$60,000	
Standard rate	15
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

Presumptive taxes on different bases and at various rates are imposed on informal traders, small-scale miners, and operators of taxicabs, omnibuses, goods vehicles, driving schools, hair-dressing salons and licensed and unlicensed bottle stores and restaurants.

### E. Miscellaneous matters

**Foreign-exchange controls.** The legislation and regulations with respect to foreign-exchange controls are currently under review. The present rules are discussed below.

The government still imposes broad controls over all transactions involving a nonresident. Applications through commercial banks are required for the approval of most transactions of this nature. Commercial banks refer exceptional items to the Reserve Bank of Zimbabwe.

Foreign investment of up to 35% in primary issues of shares and bonds is permitted if 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.

Agreements relating to foreign borrowings require registration with the commercial banker of the borrower before implementation. Borrowings in excess of specified limits 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. Foreign loans to purchase shares, existing companies or real estate, or to fund private consumption, personal loans or retail inventories, are generally discouraged.

With the approval of the authorities, 100% of after-tax normal trading profits may be remitted to nonresident shareholders within one year after the accrual of the profits.

After-tax dividends and capital gains derived from investments on the Zimbabwe Stock Exchange are fully remittable.

**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>
Botswana (b)	5	0	10	10
Bulgaria	10	0	10	10
Canada	10	0	10	10
Congo (Democratic Republic of) (b)	0	0	0	0
France	10	0	10	10
Germany	10	0	7.5	7.5
Iran (b)	5	0	5	5
Kuwait	0/5	0	10	0
Malaysia	10	0	10	10
Mauritius	10	0	15	20
Namibia (a)	5/10	0	10	0
Netherlands	10	0	10	10
Norway	15	0	10	10
Poland	10	0	10	20
Serbia (b)	5	0	10	10
South Africa	20	0	20	20
Sweden	15	0	10	10
United Kingdom	5	0	10	10
Nontreaty countries	10/15	0	15	15

(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 these treaties has not yet been published.

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## 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>
Afghanistan	Afghanis	Afs
Albania	Lek	ALL
Algeria	Dinar	DZD
Angola	Kwanza	Kz
Argentina	Peso	ARS
Armenia	Dram	AMD
Aruba	Guilder	AWG
Australia	Dollar	A\$
Austria	Euro	€
Azerbaijan	Manat	MAN
Bahamas	Dollar	B\$
Bahrain	Dinar	BD
Barbados	Dollar	BD\$\$
Belarus	Ruble	BYR
Belgium	Euro	€
Bermuda	Dollar	BMD
Bolivia	Boliviano	Bs
Bonaire, St. Eustatius and Saba (BES-Islands)	U.S. Dollar	US\$
Botswana	Pula	P
Brazil	Real	R\$
British Virgin Islands	U.S. Dollar	US\$
Brunei Darussalam	Dollar	B\$
Bulgaria	Leva	BGN
Cambodia	Khmer Riel	KHR
Cameroon	CFA Franc BEAC	XAF
Canada	Dollar	C\$
Cayman Islands	Dollar	CIS
Chile	Peso	CH\$
China	Renminbi Yuan	RMB
Colombia	Peso	COP
Congo, Democratic Republic of	Franc	CDF
Congo, Republic of	CFA Franc BEAC	XAF
Costa Rica	Colon	¢

<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Côte d'Ivoire	CFA Franc BCEAO	XOF
Croatia	Kuna	HRK
Curaçao	Antillean Guilder	ANG
Cyprus	Euro	€
Czech Republic	Koruna	CZK
Denmark	Krone	DKK
Dominican Republic	Peso	RD\$
Ecuador	U.S. Dollar	US\$
Egypt	Pound	EGP
El Salvador	Colon	SVC
Equatorial Guinea	CFA Franc BEAC	XAF
Estonia	Euro	€
Ethiopia	Birr	Birr
European Monetary Union	Euro	€
Fiji	Dollar	FJD
Finland	Euro	€
France	Euro	€
Gabon	CFA Franc BEAC	XAF
Georgia	Lari	GEL
Germany	Euro	€
Ghana	Cedi	GH¢
Greece	Euro	€
Guam	U.S. Dollar	\$
Guatemala	Quetzal	GTQ
Guernsey	Pound	£
Guinea	Guinea Franc	FG
Honduras	Lempira	L
Hong Kong SAR	Dollar	HK\$
Hungary	Forint	HUF
Iceland	Krona	ISK
India	Rupee	INR
Indonesia	Rupiah	IDR
Iraq	Dinar	IQD
Ireland	Euro	€
Isle of Man	Pound	£
Israel	New Shekel	NIS
Italy	Euro	€
Jamaica	Dollar	J\$
Japan	Yen	¥
Jersey	Pound	£
Jordan	Dinar	JD

<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Kazakhstan	Tenge	KZT
Kenya	Shilling	KSH
Korea (South)	Won	W
Kuwait	Dinar	KD
Laos	Kip	LAK
Latvia	Lats	LVL
Lebanon	Pound	LL
Lesotho	Maloti	M
Libya	Dinar	LD
Liechtenstein	Swiss Franc	CHF
Lithuania	Litas	LTL
Luxembourg	Euro	€
Macau SAR	Pataca	MOP
Macedonia	Denar	MKD
Madagascar	Ariary	MGA
Malawi	Kwacha	K
Malaysia	Ringgit	RM
Maldives	Rufiyaa	Mrf
Malta	Euro	€
Mauritania	Ouguiya	MRO
Mauritius	Rupee	Rs.
Mexico	Peso	MXN
Moldova	Leu	MDL
Mongolia	Togrog	MNT
Montenegro	Euro	€
Morocco	Dirham	MAD
Mozambique	Metical	MT
Namibia	Dollar	N\$
Netherlands	Euro	€
New Zealand	Dollar	NZ\$
Nicaragua	Cordoba	C\$
Nigeria	Naira	NGN
Northern Mariana Islands	U.S. Dollar	\$
Norway	Krone	NOK
Oman	Rial	RO
Pakistan	Rupee	PKR
Palestinian Authority	None	—
Panama	Balboa	B/.
Papua New Guinea	Kina	K
Paraguay	Guarani	G
Peru	New Sol	PEN

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<b>Country</b>	<b>Currency</b>	<b>Symbol</b>
Philippines	Peso	P
Poland	Zloty	PLN
Portugal	Euro	€
Puerto Rico	U.S. Dollar	\$
Qatar	Rial	QR
Romania	Leu	RON
Russian Federation	Ruble	RUR
Rwanda	Franc	Frw
Saudi Arabia	Riyal	SR
Senegal	CFA Franc BCEAO	XOF
Serbia	Dinar	RSD
Seychelles	Rupee	SR
Singapore	Dollar	S\$
Sint Maarten	Antillean Guilder	ANG
Slovak Republic	Euro	€
Slovenia	Euro	€
South Africa	Rand	R
Spain	Euro	€
Sri Lanka	Rupee	Rs.
Swaziland	Emalangeni	E
Sweden	Krona	SEK
Switzerland	Franc	CHF
Syria	Pound	SYP
Taiwan	Dollar	NT\$
Tanzania	Shilling	TSHS
Thailand	Baht	THB
Trinidad and Tobago	Dollar	TT\$
Tunisia	Dinar	TND
Turkey	Lira	TL
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	\$
Uruguay	Peso	UYP
Uzbekistan	Soum	UZS
Venezuela	Bolivar	Bs.F
Vietnam	Dong	VND
Zambia	Kwacha	K
Zimbabwe	U.S. Dollar	US\$

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EYG no. DL0526

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